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Supreme Court of the United States

OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED JUNE 7, 1941.

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[fol. 1] [Caption omitted]

[fol. 2]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

THE BOARD OF TRADE OF KANSAS CITY, MO., a Voluntary Association, J. F. Leahy, R. E. Swenson, G. A. Johnson, Uhlmann Grain Co., a Corporation, Davis-Noland-Merrill Grain Co., a Corporation, Simonds-Shields-Theis Grain Co., a Corporation, Merchants' Exchange of St. Louis, a Corporation, Fox Grain Company, a Corporation, Ralston Purina Company, a Corporation, Minneapolis Traffic Association, a Corporation, Archer-Daniels-Midland Company, a Corporation, Commander-Larabee Milling Company, a Corporation, The Van Dusen Harrington Company, a Corporation, Omaha Grain Exchange, a Corporation, Crowell Elevator Co., a Corporation, Omaha Elevator Company, a Corporation, Continental Grain Company, a Corporation, The Saint Joseph Grain Exchange, a Voluntary Association, R. G. Graham, K. B. Clark, Stratton Grain Company, a Corporation, Schreiber Milling and Grain Company, a Corporation, The J. C. Lysle Milling Company, a Corporation, The Blair Milling Company, a Corporation, General Mills, Inc., a Corporation and Pillsbury Flour Mills Company, a Corporation, Complainants,

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

COMPLAINT—Filed May 13, 1940

To the Honorable Judges of the District Court of the United States for the Western Division, Western District of Missouri:

Complainants respectfully represent that:

I

(A) The Board of Trade of Kansas City, Mo., one of the complainants herein, is a voluntary unincorporated asso-

[fol. 3] ciation of persons engaged in the business of buying, selling, processing and handling grain, flour, mill feeds, mixed feeds and other products of grain; its members are citizens of the United States and its sole offices, exchange floor and place of business are located in Kansas City, Jackson County, Missouri, in the Western Division of the Western District of Missouri. The officers of The Board of Trade of Kansas City, Mo., all of whom are named as complainants herein, are as follows:

J. F. Leahy, President.
R. E. Swenson, First Vice President.
G. A. Johnson, Second Vice President.

All of the said officers of said Board of Trade of Kansas City, Mo., are members thereof and each and all of said officers are citizens and residents of the State of Missouri and of the Western Division of the Western District of Missouri.

(B) The Uhlmann Grain Company is a corporation of the State of Illinois. The Davis-Noland-Merrill Grain Co. is a corporation of the State of Missouri. The Simonds-Shields-Theis Grain Company is a corporation of the State of Missouri. All of the said complainants are engaged in the business of buying, selling, processing and handling grain, flour, mill feeds, mixed feeds and other products of grain on the Kansas City, Missouri, market. The officers of the said companies are members of The Board of Trade of Kansas City, Mo.

(C) The Merchants' Exchange of St. Louis is a corporation, not for profit, of the State of Missouri. The membership is composed of a large number of grain merchants, commission merchants, elevator operators, flour millers, feed manufacturers, dealers and seed men. Its principal office is St. Louis, Missouri. Its membership are engaged in the same businesses as those set forth above in paragraph I (A).

[fol. 4] (D) The Fox Grain Company is a corporation of the State of Missouri. The Ralston Purina Company is a corporation of the State of Missouri. The said corporations are engaged at St. Louis, Missouri, in the general business as outlined above in paragraph I (A) hereof.

(E) The Minneapolis Traffic Association is a non-profit corporation of the State of Minnesota. The membership thereof is composed of those engaged in the same lines of business as the membership of The Board of Trade of Kansas City, Mo. The principal place of business is Minneapolis, Minnesota.

(F) The Archer-Daniels-Midland Company is a corporation of Delaware. The Commander-Larabee Milling Company is a corporation of Delaware. The Van Dusen Harrington Company is a corporation of the State of Minnesota. All of the said corporations are engaged at Minneapolis, Minn., in the general business as outlined above in paragraph I (A).

(G) The Omaha Grain Exchange is a non-profit corporation of the State of Nebraska. Its membership is composed of those engaged in the same general lines of business a set forth above in paragraph I (A). Its principal office and place of business is Omaha, Nebraska.

(H) The Crowell Elevator Company is a corporation of the State of Nebraska. The Omaha Elevator Company is a corporation of the State of Nebraska. The Continental Grain Company is a corporation of the State of Delaware. Such corporations are engaged at Omaha, Nebraska, in the same general lines of business as outlined in paragraph I (A).

(I) The Saint Joseph Grain Exchange is a voluntary unincorporated association of persons engaged in the same general lines of business as set forth in paragraph I (A) hereof. The officers thereof are as follows:

R. G. Graham, President.
K. B. Clark, Vice President.

[fol. 5] (J) The Stratton Grain Company is a corporation of the State of Delaware. The Schreiber Milling and Grain Company is a corporation of the State of Missouri. Both of said companies are engaged at St. Joseph, Mo., in the same general lines of business as set forth in paragraph I (A).

(K) The J. C. Lysle Milling Company is a corporation of the State of Kansas, with its principal offices and place of business at Leavenworth, Kansas. The said company is

engaged in the same general lines of business as are set forth in paragraph I (A).

(L) The Blair Milling Company is a corporation of the State of Kansas, with its principal office and place of business at Atchison, Kansas. The said company is engaged in the same general lines of business as set forth in paragraph I (A).

(M) General Mills, Inc., is a corporation of the State of Delaware. It has offices in Minneapolis, Minnesota, and owns and operates mills at Kansas City, Missouri, and Minneapolis, Minnesota. It is engaged in the same general lines of business as set forth in paragraph I (A).

(N) Pillsbury Flour Mills Company is a corporation of the State of Delaware, with its principal office and place of business in the city of Minneapolis, Minnesota. It operates mills at Atchison, Kansas, and Minneapolis, Minnesota. It is engaged in the same general lines of business as set forth in paragraph I (A).

(O) This action is brought by complainants for themselves and for others similarly situated at the terminal grain markets of Kansas City, Mo.-Kan., St. Louis, Missouri, Omaha, Nebraska, Minneapolis, Minnesota, St. Joseph, Missouri, Atchison, Kansas, and Leavenworth, Kansas.

[fol. 6] II

(A) The complainants hereinabove named bring this suit against the United States of America and Interstate Commerce Commission (hereinafter referred to as the Commission) under an Act of Congress approved October 22, 1913, 38 Statutes at Large 219 (28 U. S. C. A., Secs. 41 (28), 43, 45, 46, 47, 48), as amended, and under the general equity jurisdiction of this court for the purpose of enjoining, setting aside, suspending and annulling certain orders of the Commission and for further general relief. The defendant, United States of America, is sued pursuant to express authority and consent of Congress provided in the aforesaid Act.

(B) The defendant, Interstate Commerce Commission, is an administrative tribunal created by the Act to Regulate Commerce, approved February 4, 1887, as amended (Interstate Commerce Act), and is specifically charged with the

administration and enforcement of the provisions of said Act.

(C) Some of the orders herein complained of were not made upon the petition of any party, but said orders were made upon proceedings instituted by the Commission upon its own motion, and a substantial part of the matters herein complained of with reference to such orders arose in the judicial district in which this suit is brought. As to the other orders herein complained of, this suit is brought in the judicial district which is the residence of some of the parties upon whose petition such orders were made.

III

Kansas City, Mo.-Kan., Omaha, Nebraska, St. Louis, Missouri, Minneapolis, Minnesota, St. Joseph, Missouri, Atchison, Kansas, and Leavenworth, Kansas, wherein are located the places of business of the complainants herein, are large terminal grain markets annually receiving, [fol. 7] marketing and shipping great quantities of grain and the products of grain. The complainants operate at such markets numerous large elevators for the storage, cleaning, drying and other handling of grain, and numerous plants for the conversion of grains into flour, feeds and various other products. The complainants and said terminal markets are in competition with each other and are in direct competition with other persons and corporations doing a similar business at numerous so-called interior points in the territory adjacent to and surrounding such terminal markets.

IV

In conducting their business, the complainants receive grain in carloads at their elevators and plants from various points in the western, southwestern, northwestern and central part of the United States, carried over the railroad lines of numerous railroads that are common carriers of property subject to the Interstate Commerce Act and to the orders of the Commission herein complained of. Such grain and the products therefrom are subsequently shipped in carloads from said elevators and plants over the lines of numerous railroads to various destinations throughout the United States. Such grain and the products thereof are shipped under the provisions of tariffs published and

filed with the Commission providing applicable rates, charges, practices, conditions and transit privileges and regulations.

V

For many years prior to July 1, 1935, the applicable tariffs of each of said railroad carriers provided for the stopping of grain in transit at the terminal markets and at numerous other points for the purpose of storing, cleaning, milling and manufacturing, and provided for reshipment of such grain or its products to final destination upon payment [fol. 8] of the unpaid balance of the through rate known as the transit balance. Such tariffs applied equally to the aforesaid terminal markets and also to all interior points along the route of each carrier so that both terminal markets and interior points on the same route and other routes transited on the same through rate and there was no discrimination as to rate or transit privilege as to either terminal markets or interior points. Over a period of many years the Commission had on numerous occasions ruled that unjust and unreasonable charges, unjust discrimination and undue prejudice and disadvantage resulted in violation of Sections 1, 2, 3 and 15, respectively, of the Interstate Commerce Act where transit was granted to one point on more favorable terms than to another intermediate or interior point between the points of origin and destination.

VI

(A) On July 1, 1935, pursuant to hearing, argument and report, an order of the Commission became effective providing that industries and shippers handling grain and grain products at the aforesaid terminal markets should transit exclusively upon the basis of local rates to said markets and prescribed rates therefrom known as proportional rates, which combinations were and are in numerous instances materially higher than the applicable through rates from the same origin to the same destination via the same route and other routes under and upon which interior competing points were and are permitted to transit. Complainants have been required to pay said higher rates and have thereby:

(1) Been subjected to unjust and unreasonable charges in violation of Section 1 of the Interstate Commerce Act;

(2) Been subjected to special rates and unjust discrimination in violation of Section 2 of said Act;

(3) Been subjected to undue and unreasonable prejudice and disadvantage in violation of Section 3 of said Act; and

[fol. 9] (4) Been subjected to unjust, unreasonable, unjustly discriminatory and unduly preferential and prejudicial rates, charges and practices, in violation of Section 15 of said Act.

(B) The following are some of such rates applicable to transit at the designated terminal markets and at the designated interior points which illustrate the difference in rates being charged and collected as between terminal markets and interior points:

(1) A proportional rate of 16 cents per 100* pounds is maintained from Kansas City, Missouri, to Chicago, Illinois, over numerous routes, some of which are via Omaha, Nebraska. At all points on all of these routes at which are located dealers in grain, flour millers and other grain processors, transit is permitted on the basis of the 16 cent rate except only at Omaha, Nebraska, Saint Joseph, Missouri, Leavenworth, Kansas, and Atchison, Kansas, where similar dealers, millers and processors are required to pay higher combination rates. When, for example, Omaha is the transit point, the applicable rate is 22½ cents consisting of 6½ cents from Kansas City to Omaha and 16 cents from Omaha to Chicago. Some of the interior transit points which can transit on the 16 cent proportional rate from Kansas City to Chicago are Nebraska City, Nebraska, Crete, Nebraska, Lincoln, Nebraska, Des Moines, Iowa, Cedar Rapids, Iowa, Davenport, Iowa, Springfield, Illinois and Decatur, Illinois.

(2) The proportional rate of 16 cents from Kansas City to Chicago is added to the inbound local rates to Kansas City from grain shipping origins in the states of Kansas, Colorado, Oklahoma and Texas to make the through charges from said shipping points to Chicago. Said proportional rate is also combined with the rates from Chicago to determine the through transportation charges from Kansas City [fol. 10] to destinations east of Chicago, and thereby are

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*All rates are stated in cents per one hundred pounds.

established and determined the through charges from the said shipping points in the states of Kansas, Colorado, Oklahoma and Texas to destinations east of Chicago; and on all said traffic said dealers, millers, and processors located at Omaha, Nebraska, are required to pay through charges 6½ cents per 100 pounds in excess of the charges applicable to their competitors' traffic transited at said interior points.

(3) A proportional rate of 16 cents is maintained from Omaha, Nebraska, to Chicago, Illinois, over numerous routes, some of which are via Kansas City, Missouri. At points on all of these routes at which are located dealers in grain, flour millers and other grain processors, transit is permitted on the basis of said 16 cent rate, except only at Kansas City, Missouri, Saint Joseph, Missouri, Leavenworth, Kansas and Atchison, Kansas, where similar dealers, millers, and processors are required to pay a combination rate of 22½ cents per 100 pounds, constructed as follows: Omaha to Kansas City, Saint Joseph, Leavenworth, or Atchison, 6½ cents, and a rate thence of 16 cents. Some of the interior transit points which can transit on the 16 cent proportional rate from Omaha to Chicago are Nebraska City, Nebraska, Crete, Nebraska, Lincoln, Nebraska, Topeka, Kansas, Sedalia, Missouri, Jefferson City, Missouri, Springfield, Illinois and Decatur, Illinois.

(4) The aforesaid proportional rate of 16 cents from Omaha to Chicago is added to the inbound local rates to Omaha from grain shipping origins in the states of Nebraska, Iowa, Minnesota and South Dakota to make the through charges from said shipping points to Chicago. Said proportional rate is also combined with the rates from Chicago to determine the through transportation charges from Omaha to destinations east of Chicago, and thereby are established the through charges from the said shipping points in the states of Nebraska, Iowa, Minnesota and South Dakota to destinations east of Chicago; and on all [fol. 11] said traffic said dealers, millers, and processors located at Kansas City, Missouri, Saint Joseph, Missouri, Atchison, Kansas and Leavenworth, Kansas, are required to pay through charges 6½ cents per 100 pounds in excess of the charges applicable to their competitors' traffic transited at said interior points.

(5) A proportional rate of 14 cents is maintained from Omaha, Nebraska, to St. Louis, Missouri, over numerous routes, some of which are via Kansas City, Missouri. At all points on all of these routes at which are located dealers in grain, flour millers and other grain processors transit is permitted on the basis of the said 14 cent rate, except only at Kansas City, Missouri, Saint Joseph, Missouri, Leavenworth, Kansas and Atchison, Kansas, where similar dealers, millers, and processors are required to pay a combination rate of 18½ cents (6½ cents, Omaha to Kansas City, etc.; 12 cents thence). Some of the interior transit points which can transit on the 14 cent proportional rate from Omaha to St. Louis are Nebraska City, Nebraska, Lincoln, Nebraska, Crete, Nebraska, Topeka, Kansas, Sedalia, Missouri, Jefferson City, Missouri, Springfield, Illinois, Decatur, Illinois, Des Moines, Iowa; Cedar Rapids, Iowa and Davenport, Iowa.

(6) The aforesaid proportional rate of 14 cents from Omaha to St. Louis is added to the inbound local rates to Omaha from grain shipping origins in the states of Nebraska, Iowa, Minnesota and South Dakota to make the through charges from said shipping points to St. Louis. Said proportional rate is also combined with the rates from St. Louis to determine the through transportation charges from Omaha to destinations east and south of St. Louis, and thereby are established and determined the through charges from the said shipping points in the states of Nebraska, Iowa, Minnesota and South Dakota to destinations east and south of St. Louis; and on all of said traffic said dealers, millers and processors located at Kansas [fol. 12] City, Missouri, Saint Joseph, Missouri, Atchison, Kansas and Leavenworth, Kansas, are required to pay through charges 4½ cents per 100 pounds in excess of the charges applicable to their competitors' traffic transited at said interior points.

(7) A proportional rate of 19 cents is maintained from Kansas City, Missouri, to Memphis, Tennessee, over numerous routes, some of which are via St. Louis, Missouri. Transit is permitted at all points on all of said routes on the basis of the 19 cent rate, except only at St. Louis, Missouri, for which the applicable rate is a combination rate of 23½ cents, consisting of the rate of 12 cents from Kansas City to St. Louis, and 11½ cents from St. Louis to Memphis.

Some of the interior transit points which can transit on the 19 cent proportional rate from Kansas City to Memphis are: Sedalia, Missouri, Jefferson City, Missouri, Alton, Illinois, Belleville, Illinois, Chester, Illinois, Springfield, Missouri, Sikeston, Missouri, Little Rock, Arkansas, Ft. Smith, Arkansas, Topeka, Kansas, Salina, Kansas, Hutchinson, Kansas, Wichita, Kansas, Enid, Oklahoma, and Oklahoma City, Oklahoma.

(8) The aforesaid proportional rate of 19 cents from Kansas City to Memphis is added to the inbound local rates to Kansas City from grain shipping origins in the states of Kansas and Colorado to make the through charges from said shipping points to Memphis, and on all of said traffic transit at St. Louis is subjected to charges 4½ cents in excess of the charges applicable to traffic transited at said interior points.

(9) A rate of 26 cents is maintained from York, Nebraska, to Hannibal, Missouri, by the Chicago, Burlington & Quincy Railroad Company via several routes, one of which is via Saint Joseph, Missouri. At all points on all of said routes except only at Saint Joseph, Missouri, Atchison, Kansas, Leavenworth, Kansas, and Kansas City, [fol. 13] Missouri, transit is permitted on the basis of the said 26 cent rate, while higher combination rates are charged for transit at the points named. For example, transit at Saint Joseph, Missouri, is subjected to a combination rate of 29 cents, comprising an inbound local rate from York to St. Joseph of 17 cents and a proportional rate from Saint Joseph to Hannibal of 12 cents. Some of the interior transit points which can transit on the 26 cent rate are Lincoln, Nebraska, Nebraska City, Nebraska, Des Moines, Iowa, Burlington, Iowa, Keokuk, Iowa, Clinton, Iowa, and Davenport, Iowa.

(10) Said illustration is representative of rates from a large number of points in Nebraska to Hannibal and other destinations in Missouri and Illinois.

(11) Through rates are maintained from points in Texas south of the main-line of the Texas and Pacific Railway to St. Louis over numerous routes, some of which are via Kansas City, Missouri. Transit is permitted at all points on all of said routes on the basis of said through rates, except at Kansas City, where transit is subjected to the

payment of combination rates. For example, from San Antonio, Texas, a through rate of 46 cents applies to St. Louis. Transit at Kansas City requires the payment of the combination of rates; namely, 42 cents from San Antonio to Kansas City, and a proportional rate of 12 cents from Kansas City to St. Louis, a total of 54 cents. Some of the interior transit points which can transit on the 46 cent rate are Fort Worth, Texas, Dallas, Texas, Waco, Texas, El Reno, Oklahoma, Oklahoma City, Oklahoma, Enid, Oklahoma, Wellington, Kansas, Wichita, Kansas, Hutchinson, Kansas, Salina, Kansas, Topeka, Kansas, Pleasant Hill, Missouri, Glasgow, Missouri, Jefferson City, Missouri, Springfield, Missouri, Sikeston, Missouri, Chester, Illinois, Memphis, Tennessee, Little Rock, Arkansas, Ft. Smith, Arkansas, Texarkana, Arkansas, Jackson, Mississippi, New Orleans, Louisiana, and Shreveport, Louisiana.

[fol. 14] (12) Said rates from southern Texas points to St. Louis are added to the rates from St. Louis to make the through charges from said shipping points to destinations east of St. Louis, and on all of said traffic transit at Kansas City is subjected to rates 8 cents higher than those applicable to traffic transited at said interior points.

(13) Rates are maintained from stations in Illinois to destinations in Oklahoma and Texas which are applicable over numerous routes, some of which are via Kansas City, Missouri. At all points on said routes, excepting Kansas City, transit is allowed on the basis of the through rates, but transit at Kansas City is subjected to higher combination rates. For example, the rate from Galesburg, Illinois, to Amarillo, Texas, is 44 cents upon which transit is allowed at said other points. The combination rate applicable for transit at Kansas City is 50 cents, comprising an inbound local rate of 21 cents and an outbound proportional rate of 29 cents. Some of the interior transit points which can transit on the 44 cent rate are Topeka, Kansas, Ottawa, Kansas, Hutchinson, Kansas, Wichita, Kansas, and Enid, Oklahoma.

(14) Through rates are maintained from points in Kansas to destinations in Missouri south of St. Louis and east of Springfield, which apply over numerous routes, some of which are via Kansas City, Missouri. At other transit points on said routes said through rates permit transit, but

the corresponding charge for transit at Kansas City is the combination of local rates in and the proportional rates out. For example, from Ellis, Kansas, to West Plains, Missouri, the through rate is 32 cents, while the combination rate applicable with transit at Kansas City is 37 cents, comprising the inbound local rate of 19 cents and the outbound proportional rate of 18 cents. Some of the interior points at which transit is permitted on the basis of the 32 cent rate are Salina, Kansas, Abilene, Kansas, Topeka, Kansas, Lawrence, Kansas, Clinton, Missouri, Springfield, Missouri, Carthage, Missouri, Aurora, Missouri, and Joplin, Missouri.

[fol. 15] (15) Through rates are maintained from grain shipping points in the state of Iowa on the Chicago, Rock Island and Pacific Railway to destinations in Arkansas on said railway and connecting carriers, which apply over routes via Kansas City, Missouri. Transit is permitted at other points on said routes on the basis of said rates, but transit at Kansas City requires the payment of higher combination rates. For example, from Mason City, Iowa, a through rate of 39 cents is maintained to Little Rock, Arkansas, upon which interior points are permitted to transit. The corresponding rate for transit at Kansas City is 41 cents, comprising the inbound local rate of 22 cents and the outbound proportional rate of 19 cents. Some of the interior points at which transit is permitted on the basis of the 39 cent rate are Des Moines, Iowa, Cedar Rapids, Iowa, Keokuk, Iowa, Topeka, Kansas, Salina, Kansas, Hutchinson, Kansas, Wichita, Kansas, Wellington, Kansas, Enid, Oklahoma, and Oklahoma City, Oklahoma.

(16) A proportional rate of 19 cents is maintained from Duluth, Minnesota, to St. Louis, Missouri, over numerous routes, some of which are via Minneapolis, Minnesota. At points on all these routes at which are located dealers in grain, flour millers and other grain processors, transit is permitted on the basis of said 19 cent rate, except only at Minneapolis, Minnesota, where similar dealers and processors are required to pay a combination rate of 24 cents, constructed as follows: Duluth to Minneapolis 5 cents, Minneapolis to St. Louis 19 cents. Some of the interior transit points which can transit on the 19 cent proportional rate from Duluth to St. Louis are: Rush City, Minnesota, New

Prague, Minnesota, Cedar Rapids, Iowa, Des Moines, Iowa, Davenport, Iowa, Decatur, Illinois, Springfield, Illinois.

(17) The aforesaid proportional rate of 19 cents is added to the rates from St. Louis to points east and south of St. Louis to make the through charges from Duluth to said [fol. 16] points, and on all said traffic said dealers, millers and processors located at Minneapolis are required to pay charges 5 cents per 100 pounds in excess of the charges applicable to their competitors' traffic transited at said interior points.

(C) The foregoing are but illustrations and there are numerous other similar situations.

VII

The aforesaid rates and practices were provided for and required by the following reports and orders of the Commission:

(A) A report and order of the Commission filed and entered July 1, 1930, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, which is reported in 164 I. C. C. 619, a duly certified copy of which is attached hereto, marked Exhibit "1" and made a part hereof. (The said order has been vacated by the Commission.)

(B) A supplemental report and order of the Commission filed and entered April 13, 1931, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, which is reported in 173 I. C. C. 511, a duly certified copy of which is attached hereto, marked Exhibit "2" and made a part hereof. (The said order has been vacated by the Commission.)

(C) A further report and order of the Commission on rehearing, filed and entered October 22, 1934, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, which is reported in 205 I. C. C. 301, a duly certified copy of which is attached hereto, marked Exhibit "3" and made a part hereof.

(D) A further report and order of the Commission upon further consideration on further hearing for the purpose of

[fol. 17] clarification and modification of the previous report, filed and entered March 4, 1936, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, which is reported in 215 I. C. C. 83, a duly certified copy of which is attached hereto, marked Exhibit "4" and made a part hereof.

VIII

(A) Subsequent to the filing and entering of the foregoing reports and orders and after the same had gone into effect, The Board of Trade of Kansas City, Mo., one of the above named complainants, in behalf of its members, some of which are complainants herein, on January 29, 1937, filed its complaint with the Commission wherein it complained of the aforementioned decisions and orders because such orders of the Commission had resulted in rates which were unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act and because such orders unduly preferred other transit points, the dealers, millers and manufacturers there located and their traffic, to the undue prejudice and disadvantage of Kansas City, and complainants' members and their traffic, in violation of Section 3 of said Act, and wherein it prayed that after due hearing and investigation an order be made commanding the defendant railroad carriers named in such complaint and each of them to cease and desist from the violations of said Act and compelling them to establish and put in force and effect such rules, rates and charges as the Commission might deem reasonable and proper and free from undue prejudice. A true and correct copy of said complaint is attached hereto, marked Exhibit "5," and made a part hereof.

(B) On or about October 26, 1936, a similar complaint to that of The Board of Trade of Kansas City, Mo., was filed by the following flour milling companies: Atkinson Milling Co., The Blair Milling Company, Capital Flour Mills, Inc., [fol. 18] Commander-Larabee Milling Co., The Lukens Milling Co., J. C. Lysle Milling Co., Nebraska Consolidated Mills Co., Northwestern Consolidated Division of Standard Milling Company, Maney Milling Co., Omar Mills, Inc., Pillsbury Flour Mills Co., Russell-Miller Milling Co., and Washburn-Crosby Co. Such complainants prayed that the unreasonable and unjust charges, the unjust discrimination

and the undue preferences and advantages authorized by the orders of the Commission be removed and that the railroad carriers be ordered to cease and desist from continuing such practices. A true and correct copy of said complaint is attached hereto, marked Exhibit "6" and made a part hereof.

(C) On February 20, 1937, the Omaha Grain Exchange, The Merchants Exchange of St. Louis, Missouri, the Saint Joseph Grain Exchange and the Memphis Merchants Exchange filed a similar complaint wherein they alleged substantially the same matters and prayed substantially the same relief as set forth in Exhibit "5." A true and correct copy of such complaint is attached hereto, marked Exhibit "7" and made a part hereof.

IX

Thereafter the Commission filed and entered its report and order on July 27, 1937, wherein and whereby it found that the findings and orders previously entered in Docket No. 17000, Part 7, Grain and Grain Products within the Western District and for Export, should be and the same were modified authorizing until December 1, 1938, permissive departures from the exclusive application of the rate-break combinations at proportional rate points as prayed by the complainants. In said report the Commission found that the granting of the relief sought would not change a single rate in effect, but would merely permit the terminal markets to transit on an equality with interior transit operators on the same rates over the same routes and wherein the Commission found that the granting of the relief sought [fol. 19] would not adversely affect the rate structure as a whole. Such report and order of the Commission is reported in 223 I. C. C. 235, and a duly certified copy thereof is attached hereto, marked Exhibit "8" and made a part hereof.

X

(A) After the Commission had filed and entered its said report and order on July 27, 1937, the railroad carriers failed and refused to change said rates and practices then in effect and failed and refused to remove said unreasonable charges, unjust discrimination and undue prejudice and disadvantage, although authorized to do so by said order of the Commission. On April 8, 1938, The Board of

Trade of Kansas City, Mo., in behalf of its members, filed its petition for reconsideration and reargument and for formal findings and a mandatory order requiring the railroad carriers to establish lawful rates, charges and practices, and to compel them to cease and desist from violations of the Interstate Commerce Act. The Saint Joseph Grain Exchange, The Merchants Exchange of St. Louis and the Memphis Merchants Exchange joined in said petition. A true and correct copy of said petition for reconsideration is attached hereto, marked Exhibit "9" and made a part hereof.

(B) On April 12, 1938, The Atkinson Milling Company and other milling companies enumerated in paragraph VIII (B) above, filed their petition for reconsideration and reargument wherein they alleged substantially the same matters as did The Board of Trade of Kansas City, Mo., and wherein they prayed for similar relief. A true and correct copy of said petition for reconsideration and reargument is attached hereto, marked Exhibit "10" and made a part hereof.

(C) On April 14, 1938, the Omaha Grain Exchange filed its petition for reconsideration, reargument and modification of the report and order of July 27, 1937, wherein it [fol. 20] alleged substantially the same matters as did The Board of Trade of Kansas City, Mo., and wherein it prayed the same relief. A true and correct copy of said petition for reconsideration and reargument is attached hereto, marked Exhibit "11" and made a part hereof.

XI

Thereafter and on July 12, 1938, the Commission filed and entered its report and order wherein and whereby for the reasons stated it denied the relief sought under the aforementioned petitions for reconsideration and reargument. Such report of the Commission is reported in 229 I. C. C. 9 and a duly certified copy of such report and order is attached hereto, marked Exhibit "12" and made a part hereof.

XII

(A) Afterwards and on October 8, 1938, The Board of Trade of Kansas City, Mo., and The Saint Joseph Grain Exchange, filed a second petition for reconsideration, re-

argument and for modification in part of the said reports and orders of the Commission as described in paragraphs IX and XI. A true and correct copy of said petition is attached hereto, marked Exhibit "13" and made a part hereof.

(B) On October 5, 1938, The Atkinson Milling Company and other milling companies enumerated above in paragraph VIII (B) filed their petition for reopening and reconsideration. A true and correct copy of such petition is filed herewith marked Exhibit "14" and made a part hereof.

(C) On or about November 4, 1938, The Omaha Grain Exchange filed its petition for a reconsideration of the order entered July 12, 1938, a true and correct copy of which is attached hereto, marked Exhibit "15" and made a part hereof.

[fol. 21] XIII

Thereafter and on March 13, 1939, the Commission filed and entered its report and order wherein and whereby for the reasons stated therein it denied the petitions for reconsideration, reargument and reopening referred to above in paragraph XII. Such report of the Commission is reported in 231 I. C. C. 793, and a duly certified copy of such report and order is attached hereto, marked Exhibit "16" and made a part hereof.

XIV

On or about June 23, 1939, the Atkinson Milling Company and the other complainants mentioned in paragraph VIII (B) hereof, filed a third petition for further consideration, and said petition was summarily denied by the Commission under date of July 24, 1939, without a report. A true and correct copy of said petition is hereto attached, marked Exhibit "17," and made a part hereof.

XV

It appears from the face of the aforesaid reports and orders of the Commission that its decisions and orders were based largely upon the following opinions of the Commission:

(a) That the said orders and decisions herein complained of do not subject the rate-break markets on indirect routes

to undue prejudice and disadvantage and give to points on the same or other routes undue preference and advantage;

(b) That the said decisions and orders merely accord to the rate-break markets and to interior transit points on all routes the benefit of their respective forms of transit, each without interference from the other;

(c) That an order requiring transit at rate-break markets on indirect routes, as requested by complainants herein, is not warranted under Section 1 of the Interstate Commerce Act;

[fol. 22] (d) That the granting of transit at rate-break markets would break down the rate-break adjustment as approved in the decisions and orders of the Commission;

(e) That transit balances less than the proportional rates out of the rate-break markets tended to disrupt the rate-break combinations, disorganize the general rate structure, make uncertain in advance the outbound basis of charge, giving undue preference to the users of transit balances over the users of proportional rates, and depress the price of grain at the rate-break markets;

(f) That the terminal markets have certain advantages over interior points resulting from their location and that the Commission has the power or authority to equalize these alleged advantages through the granting of different and lower rates and bases of transit at such interior points as compared with such terminal or rate-break markets;

(g) That the rate-break or terminal markets have an advantage over interior markets because of the proportional rates approved by the Commission and that the Commission has the power to equalize such alleged advantage by granting to the interior points lower and different rates and bases of transit than permitted to the terminal or rate-break markets;

(h) That there is no difference in the mechanics or operations of transit at interior points and at the rate-break markets, but that there is a substantial difference in the effects of the transit operation under the through rates and the rate-break combinations, which justifies the difference in the transit privileges which the Commission required to be established.

XVI

Complainants allege that each and all of the aforesaid reports and orders of the Commission which are attached hereto, marked Exhibits "3," "4," "12" and "16," and the order of July 24, 1939, and the reports of the Commission which are attached hereto as parts of Exhibits "1" and "2," in so far as they have provided for, and refuse [fol. 23] to remove the unjust and unreasonable charges and practices, unjust discrimination, and undue and unreasonable prejudices and disadvantages, herein complained of and hereinbefore described, are void and of no effect for the following reasons:

(a) It appears from the face of said reports and orders that the same are based upon erroneous interpretations and applications of the law;

(b) It appears from the face of said reports and orders that the complainants, by reason of the matters complained of, have been subjected to unjust and unreasonable charges in violation of Section 1 of the Interstate Commerce Act and that the Commission, by the application of erroneous principles of law, has improperly and erroneously decided and ruled in its said reports and orders that complainants were not subjected to unjust and unreasonable charges in violation of Section 1 of said Act and the Commission has by such erroneous reports and orders unlawfully authorized and provided for a continuance of such unjust and unreasonable charges, in violation of Section 1 of said Act;

(c) It appears from the face of said reports and orders that the complainants, by reason of the matters complained of, have been subjected to special rates and unjust discrimination in violation of Section 2 of the Interstate Commerce Act, and that the Commission, by the application of erroneous principles of law, has improperly and erroneously decided and ruled in its said reports and orders that complainants were not subjected to special rates and unjust discrimination in violation of Section 2 of said Act, and the Commission has, by such erroneous reports and orders, unlawfully authorized and provided for a continuance of such special rates and unjust discrimination, in violation of Section 2 of said Act;

(d) It appears from the face of said reports and orders that the complainants, by reason of the matters complained

of, have been subjected to undue and unreasonable prejudices and disadvantages in violation of Section 3 of the Interstate Commerce Act and that the Commission, by the [fol. 24] application of erroneous principles of law, has improperly and erroneously decided and ruled in its said reports and orders that complainants were not subjected to undue and unreasonable prejudices and disadvantages in violation of Section 3 of said Act and the Commission has by such erroneous reports and orders unlawfully authorized and provided for a continuance of such undue and unreasonable prejudices and disadvantages, in violation of Section 3 of said Act;

(e) It appears from the face of said reports and orders that the Commission has determined and prescribed rates, charges and practices to be thereafter paid and observed by complainants and has in so doing exceeded its authority and power and violated the provisions of Section 15 of the Interstate Commerce Act by establishing rates, charges and practices that are unjust, unfair and unreasonable;

(f) It appears from the face of said reports and orders that the same were and are arbitrary, discriminatory and unlawful and beyond the lawful power and authority of the Commission;

(g) It appears from the face of the said reports and orders that the same do subject complainants herein and others similarly situated to undue prejudice and disadvantage and do give to other points on the same routes and other routes undue preference and advantage, in violation of Section 3 of the Interstate Commerce Act;

(h) It appears from the face of said reports and orders that the Commission found and ruled that the granting of more favorable transit privileges at one point than at other competing points unduly prejudices and discriminates against such points not enjoying equal transit privileges but that the Commission erroneously and without lawful reasons failed and refused to apply such rule as between terminal or rate-break markets and other interior points, in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(i) It appears from the face of said reports and orders that the same are not warranted, in so far as the same re-

[fol. 25] quire transit at rate-break markets on indirect routes on different and higher charges and bases of transit at such points, as compared with interior points, in violation of Section 1 of the Interstate Commerce Act;

(j) It appears from the face of said reports and orders that the Commission's refusal to allow terminal or rate-break markets to transit on the same basis as interior points was based in part upon the erroneous and legally insufficient ground that to do so would destroy, disturb or affect the rate-break scheme approved by the Commission in its proceedings under Docket No. 17,000;

(k) It appears from the face of said reports and orders that the granting of transit to the rate-break or terminal points on the same basis as to interior points would not break down the rate-break adjustment approved by the Interstate Commerce Commission, but that, on the contrary, the granting of such transit on such basis would give effect to the provisions of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(l) It appears from the face of said reports and orders that the granting of transit at the rate-break or terminal points on the same basis as at interior points, would not tend to disrupt the rate-break combinations and that, even though it might tend to disrupt the rate-break combinations, nevertheless such result would not and does not justify the Commission in the issuance of the said reports and orders, the same being arbitrary and beyond the lawful power and authority of the Federal Commission and in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(m) It appears from the face of the said reports and orders that the granting of transit at terminal or rate-break points on the same charges and on the same basis as granted to interior points would not disorganize the general rate structure, make uncertain in advance the outbound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates or depress the [fol. 26] price of grain at the rate-break markets and, even though the granting of such transit on the same charges and basis might have such results, nevertheless the said reports and orders of the Commission are arbitrary and beyond the lawful power and authority of the Commission and in viola-

tion of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(n) It appears from the face of said reports and orders that they are based in part upon the erroneous and unlawful conclusion by the Commission that it has the power to equalize the alleged natural advantages possessed by terminal or rate-break markets over interior points through granting to the interior points of transit privileges at better, different and lower rates than, and upon different bases from, transit privileges granted to terminal or rate-break points or markets, all in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(o) It appears from the face of said reports and orders that they are based in part upon the erroneous and unlawful conclusion by the Commission that it has the power to equalize the alleged natural advantages of terminal or rate-break markets over interior points arising from the proportional rates approved by the Commission, through the granting to the interior points of transit privileges on better, lower and different rates, charges and bases than granted to the terminal points or markets, all in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(p) It appears from the face of said reports and orders that there is no difference (and that the Commission did not find any difference) in the character or quantum of services or the cost thereof of transit which would support its orders whereby it permitted interior market competitors of complainants to transit on a lower and more favorable rate and on a more favorable basis than complainants at terminal markets, and that for such reasons all of said orders are in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(q) It appears from the face of said reports and orders that the Commission undertook to establish a distinction [fol. 27] between transit at terminal markets and at interior points that is wholly unfounded in law and in fact and results in unjust and unreasonable charges, unjust discrimination and undue and unreasonable prejudice and disadvantage, all in violation of Sections 1, 2, 3 and 15 of the Interstate Commerce Act;

(r) It appears from the face of said reports and orders that they are based in part upon alleged differences in the

effects of the transit operation under the through rates and the rate-break combinations, notwithstanding the fact that the situation complained of relates solely to transit on through rates, and that the Commission found that there is no difference in the transit operation at interior points and at rate-break points under such rates, all in violation of Sections 2 and 3 of the said Act;

(s) It appears from the face of said reports and orders that they are arbitrary and unreasonable and inconsistent with previous rulings of the Commission and the decisions of the courts holding it unlawful to allow transit at one point on more favorable terms than allowed at other points;

(t) The findings of the Commission in said reports are wholly insufficient to support the orders filed and entered by the Commission.

XVII

By reason of such unjust, unreasonable, unjustly discriminatory, prejudicial and disadvantageous rates and practices and the unjust, unreasonable, unjustly discriminatory and prejudicial preference and advantage given thereby to complainants' competitors, complainants have suffered irreparable damage and will, unless the relief prayed herein be granted, continue to suffer irreparable damage and injury against which they have no adequate remedy at law or otherwise except that the relief prayed herein be granted. The direct result of the reports and orders of the Interstate Commerce Commission herein complained of is that the trade and business of complainants [fol. 28] and others similarly situated have been and are being irreparably injured and damaged and will in the future be practically destroyed unless the relief prayed herein is granted. The profits, value, volume and good will of the trade and business of complainants and others similarly situated have been and are being seriously damaged and injured as the direct result of the reports and orders herein complained of, and will be further injured and damaged unless the relief herein prayed for is granted. This action is necessary to avoid very numerous other suits and actions.

XVIII

Prayer

Wherefore, complainants pray:

(a) That a subpoena or subpoenas in chancery issue out of and under the seal of this Honorable Court directed to the defendants as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Commission and another copy in the Department of Justice as in said District Court Jurisdiction Act provided, and that thereby the defendants be required on or before a date to be specified to appear herein and answer this complaint;

(b) That upon hearing, this Court adjudge, order and decree that the said orders of the Commission, Exhibits 3, 4, 12 and 16, and the order of July 24, 1939, in so far as the same require or permit a basis of transit at the terminal markets herein mentioned different from the basis of transit at competing interior or intermediate points, and in so far as the same require or permit transit at such terminal markets at different and higher rates than at such interior or intermediate points, are and have at all times been beyond the lawful authority of the Commission and are wholly void and that such portions of said orders be perpetually set aside, suspended and annulled and the enforcement thereof perpetually enjoined;

[fol. 29] (c) That complainants and each of them may have such other and further relief in the premises as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

M. W. Borders, Jr., Wilfred Wimmell, 2700 Fidelity Bldg., Kansas City, Missouri, Samuel J. Wettrick, One LaSalle St. Building, Chicago, Illinois, Attorneys for Complainants.

Duly sworn to by F. A. Theis. Jurat omitted in printing.

[fol. 30] LIST OF EXHIBITS TO COMPLAINT

Exhibit 1—Report and Order of the Interstate Commerce Commission, filed and entered July 1, 1930, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export (164 I. C. C. 619).

Exhibit 2—Supplemental Report and Order filed and entered April 13, 1931, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export (173 I. C. C. 511).

Exhibit 3—Report and Order of the Commission on rehearing, filed and entered October 22, 1934, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export (205 I. C. C. 301).

Exhibit 4—Report and Order of the Commission upon further consideration on further hearing for the purpose of clarification and modification of the previous report, filed and entered March 4, 1936, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export (215 I. C. C. 83).

Exhibit 5—Complaint of The Board of Trade of Kansas City, Mo., dated January 29, 1937.

Exhibit 6—Complaint of the Atkinson Milling Company, et al., dated October 26, 1936.

Exhibit 7—Complaint of the Omaha Grain Exchange, dated February 20, 1937.

Exhibit 8—Report and Order of the Commission filed and entered July 27, 1937, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, No. [fol. 31] 27,580, 27,628 and No. 27,628 Sub-No.-1 (223 I. C. C. 235).

Exhibit 9—Petition of The Board of Trade of Kansas City, Mo., the St. Joseph Grain Exchange, the Merchants Exchange of St. Louis and the Memphis Merchants Exchange, dated April 8, 1938, for reconsideration and reargument and for formal findings and a mandatory order.

Exhibit 10—Petition of Atkinson Milling Company, et al., for reconsideration and reargument, dated April 12, 1938.

Exhibit 11—Petition of Omaha Grain Exchange for reconsideration, reargument and modification, dated April 14, 1938.

Exhibit 12—Report and Order of the Commission filed and entered July 12, 1938, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, No. 27,580, No. 27,628 and No. 27,628 Sub-No.-1 (229 I. C. C. 9).

Exhibit 13—Petition of the Saint Joseph Grain Exchange and The Board of Trade of Kansas City, Mo., dated October 8, 1938, for reconsideration, reargument and for modification in part of reports and orders of the Commission.

Exhibit 14—Petition of Atkinson Milling Co., et al., dated October 5, 1938, for reopening and reconsideration.

Exhibt 15—Petition of the Omaha Grain Exchange, dated November 4, 1938, for reconsideration of the Order entered July 12, 1938.

Exhibit 16—Report and Order of the Commission, filed and entered March 13, 1939, in Docket No. 17,000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases, No. 27,580, No. 27,628 and No. 27,628 Sub-No.-1 (231 I. C. C. 793).

Exhibit 17—Petition of the Atkinson Milling Co., et al., dated June 20, 1939, for further consideration.

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INTERSTATE COMMERCE COMMISSION

No. 17000[1]

RATE STRUCTURE INVESTIGATION, PART VII

GRAIN AND GRAIN PRODUCTS WITHIN WESTERN DISTRICT AND FOR EXPORT

Submitted July 1, 1929. Decided July 1, 1930

1. Rates and practices affecting the transportation of grain and grain products throughout the western district, from that district to all ports of export, and from Lake Erie ports to Atlantic ports (as part of a lake-and-rail transportation) reviewed under the interstate commerce act and the Hoch-Smith resolution, and a general readjustment required.
2. Dual system of proportional rates and transit balances outbound from primary markets results in undue preference of shippers under the transit balances and undue prejudice to shippers under the higher proportional rates. Rates through primary markets required to be made exclusively on the rate-break basis of flat rates into the markets and proportional rates beyond, and overhead through rates less than the market combinations required to be canceled.
3. Reasonable through rates prescribed and, when made through the primary markets from which there are proportional rates, broken back into combinations of flat rates into the primary markets and proportional rates beyond.
4. Relation of proportional rates from Omaha, Kansas City, and St. Louis to Memphis and New Orleans, and from Kansas City, Omaha, and Sioux City to Minneapolis and Duluth, substantially revised.
5. Requests of Wichita, Kans., and Grand Forks, N. Dak., for the prescription of outbound proportional rates denied.
6. Rates on coarse grains are now the same as on wheat west of the Rocky Mountains and in Illinois, and 90 per cent of the rates on wheat in the remainder of the western district. One rate prescribed for application on both wheat and coarse grains throughout the entire western district and in Illinois.
7. Rates on grain products, including flour, are higher than on grain from which the products are made in some of the territory west of the Rocky Mountains, and on some transcontinental shipments to the Pacific coast and are the same as on the grain from which the products are made throughout the remainder of the western district. One rate prescribed for application on grain and grain products throughout the entire district.
8. Bran, shorts, and middlings move out of transit points on the transit balances of through rates on wheat in some instances and on the transit balances of through rates on coarse grains in others. The one basis

[1] This proceeding also embraces 86 formal complaint and suspension proceedings (also subnumbers of items of the complaints), as shown in the statement of issues in Appendix A.

herein prescribed for both wheat and coarse grains will correct existing inequalities in this respect.

9. Mixed feeds containing articles other than the direct products of grain are not entitled to move out of primary markets at proportional rates or out of transit points at the transit balances of through rates, applicable on grain and grain products.
10. Rates on flaxseed prescribed on basis of 112 per cent of the contemporaneous rates on wheat.
11. Bases of rates on farm seeds revised.
12. Transit stops without separate charge limited to two for milling or other treatment plus one for inspection, additional stops for other than inspection to be paid for at the rate of 2 cents per hundred pounds for each stop.
13. Transit is included in the line-haul rate in all parts of the western district except in some parts of the Northwest. The rates prescribed herein will include transit in the line-haul rate in all parts of the western district.
14. Transit tariffs should be thoroughly overhauled and present grants of transit, out-of-line, and back hauls beyond the point of reasonable competitive necessity eliminated.
15. Transit regulations should be published in transit circulars separate from the tariffs of rates in connection with which the regulations are to be applied.
16. Storage in transit of grain products not still in the process of manufacture should be discontinued.
17. So-called unit rule for mixed-carload shipments found to be unlawful.
18. Request of Minneapolis for transit under the rate to Duluth from North Dakota and Montana, from which the rates to Minneapolis and Duluth are the same, based on the location of Minneapolis directly intermediate to Duluth on the route of the Chicago, Milwaukee, St. Paul & Pacific denied, and the combination of flat rates to Minneapolis and the proportional rate beyond found to be the proper basis of charge under the rate-break system of making rates through primary markets herein prescribed.
19. Previous finding that the rates to Portland, Oreg., should be 10 per cent lower than to Puget Sound ports from points south of the Snake River in Washington and Oregon affirmed.
20. Readjustments required in numerous specific situations presented upon this record and by formal complaints and investigation and suspension proceedings consolidated therewith.
21. One basis for both export and domestic shipments prescribed for application to Texas Gulf ports and north Pacific coast ports.
22. Export differentials to Galveston under New Orleans from designated areas in Texas, Oklahoma, and Kansas prescribed.
23. Relation of export rates from St. Louis, Chicago, and Missouri River markets to New Orleans and Baltimore revised.

Clay S. Henderson, *Brooks Hays*, and *A. D. Beals* for Arkansas Railroad Commission; *William L. Boatright*, *S. E. Naugle*, *Ralph L. Carr*, and *T. S. Wood* for State of Colorado; *J. M. Lampert*, and *Samuel L. Newton* for Public Utilities Commission of Idaho; *Oppenheim & Lampert* for State of Idaho, ex rel. Public Utilities Commission: *P. H. Moynihan* and *H. M. Slater* for Illinois Commerce Com-

mission; *J. H. Henderson*, *Neil Garrett*, *C. B. Ellis*, *Walter Condran*, and *W. F. Parsons* for State of Iowa; *John M. Kinkel*, *C. B. Randall*, *C. J. Putt*, *M. J. Healey*, *W. J. Scott*, *A. A. Brown*, *E. H. Hogueland*, *A. M. Corp*, and *J. N. Atkinson* for Public Service Commission of State of Kansas; *Francis Williams* for Public Service Commission of Louisiana; *G. A. Youngquist*, *E. C. Carman*, and *John F. Bonner* for State of Minnesota; *O. P. B. Jacobson*, *Frank W. Matson*, *L. R. Bitney*, and *C. J. Laurisch* for Minnesota Railroad and Warehouse Commission; *D. D. McDonald* and *V. E. Smart* for Public Service Commission of Missouri; *Daniel Boyle*, *Francis A. Silver*, *Lee Dennis*, *H. G. Schaefer*, and *E. G. Toomey*, for Board of Railroad Commissioners of State of Montana; *Hugh LaMaster* for State of Nebraska; *U. G. Powell* for Nebraska State Railway Commission; *John F. Shaughnessy* and Frank B. Warren for Public Service Commission of Nevada; *Max Fernandez* and *Harry S. Bowman* for State Corporation Commission of New Mexico; *George F. Shafer* and *S. B. Houck* for State of North Dakota; *T. C. Madden*, *James A. Little*, and *E. M. Hendricks* for Board of Railroad Commissioners of North Dakota; *Paul A. Walker* and *C. B. Bee* for Corporation Commission of Oklahoma; *Wm. P. Ellis* and *J. O. Bailey* for Public Service Commission of Oregon; *D. L. Kelley*, *Raymond L. Dillman*, and *H. A. Hanson* for State of South Dakota; *Ernest May* for State of Texas; *H. C. Brodie* for State of Washington; *Herman L. Ekern* and *C. E. Schreiber* for Railroad Commisssion of Wisconsin; *David J. Howell*, *V. O. Wilson*, and *James A. Greenwood*, for State of Wyoming; and *John E. Benton* for National Association of Railroad and Utilities Commissioners.

M. H. Love and *H. W. Prickett* for Ogden Grain Exchange; *G. H. Work* for Colorado Milling & Elevator Company; *R. S. Orr* for Montana Flour Mills Company, Montana Elevator Company, Judith Basin Mills, Incorporated, Cascade Mill & Elevator Company, State Elevator Company, and Judith Milling Company; *L. F. Nichols* for Royal Milling Company, Rocky Mountain Elevator Company, and Northwestern Grain Dealers Association of Montana; *W. T. McArthur* for Southern Kansas Millers' Club; *H. D. Driscoll* for Oklahoma Millers' Association; *S. J. Cole* for Board of City Development of Amarillo, Tex.; *M. W. Martin* for Pine Bluff Grain Exchange; *F. E. Potts* for Helena Traffic Bureau; *L. Carter Johnson* for Ritchie Grocer Company, Plunkett-Jarrell-Dilby Company, Southern Grain & Produce Company, Logan Grocer Company, Hope Chamber of Commerce, El Dorado Chamber of Commerce, and Hot Springs Chamber of Commerce; *J. W. Shorthill* for Farmers National Grain Dealers Association and Farmers Elevator Association of Nebraska; *J. A. Little* for North Dakota Fair Freight Rate

Association and Farmers National Grain Dealers Association: *Clyde M. Reed* and *Bernard L. Glocer* for Southwest Missouri Millers Association, Farmers Educational & Cooperative Union of America, Kansas State Farm Bureau, Farmers Cooperative Grain Dealers Association, Farmers Cooperative Commission, Kansas State Grange, Southwestern Cooperative Grain Marketing Association, and Kansas Cooperative Wheat Marketing Association: *Ed. P. Byars* and *Frank A. Leffingwell* for Texas Industrial Traffic League, Texas Wheat Growers Association, Texas Grain Dealers Association, Panhandle Grain Dealers Association, West Texas Chamber of Commerce, East Texas Chamber of Commerce, Fort Worth Grain & Cotton Exchange, Amarillo Board of City Development, Dallas Chamber of Commerce, El Paso Freight Bureau, Houston Chamber of Commerce, Galveston Chamber of Commerce, Port Arthur Chamber of Commerce, San Antonio Freight Bureau, and Waco Chamber of Commerce: *Emmet J. Forman, R. P. McCarthy, R. S. Sawyer*, and *F. A. Jones* for Globe Grain & Milling Company, California Milling Corporation, Capitol Milling Company, Pasadena Milling Company, and Associated Jobbers & Manufacturers of Los Angeles: *E. B. Smith* for Sperry Flour Company: *R. P. McCarthy* for Edward L. Eyre & Company, Hart-Hill Grain Company; C. B. Westrope & Company, R. Volmer, Kerr-Gifford & Company, and E. Clemens Horst Company; *B. H. Carmichael* and *F. W. Turcotte* for Taylor Milling Company, Poultrymen's Cooperative Milling Association: Nichols Grain & Milling Company: Huffine Grain Company, and Dairymen's Feed & Supply Company: *C. S. Connolly* for Albers Brothers Milling Company: *J. E. McCurdy* for Poultry Producers of Central California: and *J. Geo. Mann* for Farm Seed Association of N. A., and American Seed Trade Association: *Joseph M. Teal* and *William C. McCulloch* for Port of Portland, Commission of Public Docks, Portland Chamber of Commerce, and Portland Traffic & Transportation Association: *John H. Dunbar* and *H. C. Brodie* for Department of Public Works of State of Washington: *Bradford & Synder* for Port of Seattle: *Homer T. Bone* for Port of Tacoma: *S. J. Wettrick* for parties in brief: *Leonard C. Young* for Board of Railroad Commissioners of State of Montana: *John H. Dunbar, H. C. Brodie, John C. Denney, James P. Neal*, and *C. Rea Moore*, for Department of Public Works of Washington: *R. D. Lytle* for North Pacific Millers Association: *S. J. Wettrick* for Port of Seattle, Port of Tacoma, Chamber of Commerce of Seattle, Chamber of Commerce of Tacoma, and Columbia Basin Rate Committee of Walla Walla: *Arthur M. Geary* for Washington State Farm Bureau, Washington State Grange, Washington Farmers Union, Umatilla County Farm Bureau, Oregon State Grange, Oregon Farmers

Union, and Idaho State Grange; *L. S. McIntyre* for Seattle Chamber of Commerce; *Jay W. McCune* for Tacoma Chamber of Commerce; *W. S. Cahill* for Port of Seattle; *Geo. W. Osgood* for Port of Tacoma; *Charles H. Paul* and *Guy L. Anderson* for Longview Chamber of Commerce; *T. P. Fish* for Port of Kelso, Longview, Wash.; *G. C. Fulton* and *A. C. Fulton* for Port of Astoria; *S. J. Wattrick* for Fisher Flouring Mills Company and White-Dulaney Company; *N. E. Williams* for Chamber of Commerce of Fargo; *J. D. Kent* and *E. G. Wylie* for Des Moines Elevator & Grain Company, Des Moines Board of Trade, and Greater Des Moines Committee; *L. N. Conyers* for Feed Manufacturers' Traffic Committee; *W. K. Cole*, *R. L. Morgenweck*, and *D. L. Kelley* for Sheridan Flouring Mills, Incorporated; *H. A. Bronson* and *T. A. Durrant* for State of North Dakota, North Dakota Mill & Elevator Association, and North Dakota Terminal Exchange; *C. T. Vandenover* for Southern Minnesota Mills; *W. H. Fitzpatrick* for St. Joseph Grain Exchange; *F. Gordon Willis* for Waggoner-Gates Milling Company; *A. R. Kinney* and *Gerome V. Topping* for Southwestern Millers' League; *E. H. Hogueland* for Board of Trade, Kansas City, Mo.; *J. J. Hartnett* for Kansas Flour Mills Corporation; *E. H. Tipton* for Larabee Flour Mills Company; *O. W. Tong* for Minnesota-Dakota Transit Millers; *Sydney Anderson*, *A. P. Husband*, *E. Stanley Wagner*, and *Herbert J. Campbell* for Millers' National Federation; *J. A. Little* for Superior Traffic Association, and Central Nebraska Grain Shippers Association; and *William Church Osborn*, *Greenville Clark*, *Henry J. Friendly*, and *Ernest S. Ballard* for security holders' committees for a fair return.

H. C. Wilson for Sioux City Grain Exchange; *F. S. Keiser* for Duluth Board of Trade; *C. B. Rader* for Wichita Board of Trade; *J. S. Brown*, for Board of Trade of City of Chicago; *J. L. Bowlus* for Chamber of Commerce of City of Milwaukee; *J. B. McGinnis* for Memphis Merchants Exchange; *Carl Giessow*, *Edgar Moulton*, *Nuel D. Belnap*, *John S. Burchmore*, and *Luther M. Walter* for New Orleans Joint Traffic Bureau; *Ray Williams* for Board of Trade of Cairo, Ill.; *J. L. Collyer* for Peoria Board of Trade; *Frank B. Townsend* for Minneapolis Traffic Association; *Edward P. Smith* and *John A. Kuhn* for Omaha Grain Exchange; *Mart H. Royston*, *Fred N. Oliver*, and *E. H. Thornton* for Galveston Chamber of Commerce, Galveston Cotton Exchange & Board of Trade, and Texas City Board of Trade; *F. P. Willette* for Atchison Board of Trade; *D. J. Schuh* for Cincinnati Board of Trade, Incorporated; *W. R. Scott* for Board of Trade of Kansas City, Mo.; *A. F. Vendergrift* for Louisville Board of Trade; *W. J. Hanning* for Owensboro Chamber of Commerce; *F. A. Wilkins* for St. Joseph Grain Exchange; *E. P.*

Costello for Merchants Exchange of St. Louis: *F. Bradford* for Sioux City Grain Exchange: *H. A. Thompson for Leavenworth Chamber* of Commerce, Inc.; *R. T. Willette* for Chamber of Commerce of Kansas City, Kans.; *J. W. Holloway* for Board of Trade of Kansas City, Mo.: *Ralph Merriam* for Board of Trade of Kansas City, Mo.: *H. J. Fernandez* for Traffic Bureau, Monroe, La.; and *W. S. Cornell* and *E. B. Wilson* for Chamber of Commerce, Shreveport, La.; *H. J. Wagner* for Norfolk Chamber of Commerce; *R. F. Cooke* for Texas Wheat Growers Sales Corporation; *Y. H. Sparrow* for Great West Mill & Elevator Company; *C. L. Lockwood* for Wilson Company, Floersheim Mercantile Company, Mesquero Elevator Company, *R. C. Daniels*, and Maxwell & Hillyer Grain Company; *J. F. Adams* for Delmar Company, and Archer Daniels Midland Company (Grain Department); *S. C. Bates* for Jobbers & Manufacturers Association, Springfield, Mo.; *F. W. Lipscomb* for Lipscomb Grain & Seed Company; *J. A. Copenhover* for Tindle Milling Company; *H. J. Meyer* for Meyer Milling Company; *J. K. Woodfill* for Middlestates Milling Company; *C. F. Davis* for Missouri Farmers Association; *E. E. Maschall* for Shellabarger Mill & Elevator Company; *J. L. Hogan* for Abilene Flour Mills; *W. B. Brown* for Security Flour Mills; *R. Morgenstern* for H. D. Lee Flour Mills; *Fred Martin* for Robinson Milling Company; *W. C. Nichols* for Western Star Milling Company; *E. W. Adams* for E. L. Ridrel Grain Company; *J. O. Kocher* for Cowgill Flour Mills, McDaniel Milling Company, McDaniel Grain & Elevator Company, Morrow Milling Company, Ball & Gunning Milling Company, and Brand-Dunwoody Milling Company; *J. M. Herndon* for Rodney Milling Company; *Herman Mueller* and *E. H. Berg* for St. Paul Association; *Frank B. Townsend* and *Lee Kuempel* for Minneapolis Traffic Association; *A. S. Boden* for Aberdeen Commercial Club; *A. B. Ayers* for Cream of Wheat Company; *Carl C. Johnson* for Halbit & Carey Company; *P. F. Schennemann* for Monarch Elevator Company; *W. H. Perry* for Pillsbury Flour Mills Company; *L. D. Veltum* for Northwestern Consolidated Milling Company; *M. H. Strothman* for Washburn-Crosby Company; *D. A. Small* for Archer Daniels Midland Company; *H. S. Feltus* for Van Dusen Harrington Company; *Gustav Mehlin* for W. J. Jennison Company; *H. D. Driscoll* for Oklahoma City Mill & Elevator Company, The Oklahoma Mill Company; *R. E. Hughes* for New Era Milling Company; *J. B. McGinnis* for Lucius P. Cook, American Grain & Hay Company, Embry E. Anderson, Royal Feed & Milling Company, United States Feed Company, and John Wade & Sons Company; *H. C. Wilson* and *G. F. Nicolin* for Sioux City Grain Exchange and Mystic Mills; *Otto Mortensen* for Cargill

Elevator Company: *Chas. W. Mittendorf* for Hutchison Chamber of Commerce; *J. D. Youman* for Board of Commissioners of Port of New Orleans.

L. G. Macomber for Toledo Produce Exchange; *Frank S. Davis* for Maritime Association of Boston Chamber of Commerce, Boston Grain & Flour Exchange, and Port of Boston; and *Mayer, Meyer, Austrian & Platt* for Great Lakes Transit Corporation.

M. L. Countryman, jr., Charles A. Hart, J. N. Davis, A. H. Lossow, and *R. J. Hagman* for northern carriers; *Walter McFarland, Elmer A. Smith, P. F. Gault, Douglas F. Smith, R. S. Outlaw,* and *A. B. Enoch* for carriers in western trunk-line and southwestern territories; *D. P. Connell* for official classification lines; *J. M. Souby, Douglas F. Smith, A. C. Spencer,* and *W. A. Robbins* for Union Pacific system lines in Oregon, Washington, Idaho, and Utah; *L. H. Strasser* and *Ralph M. Shaw* for carriers in western district; *J. M. Souby, Douglas F. Smith,* and *E. E. Bennett* for certain defendants; *J. N. Davis, P. F. Gault, Walter McFarland, R. S. Outlaw, Kenneth L. Richmond,* and *Elmer A. Smith* for carriers in Illinois; *Elmer Westlake, R. S. Outlaw, Robert Brennan, Berne Levy,* and *Platt Kent* for Atchison, Topeka & Santa Fe Railway Company; *Frank H. Moore* and *Wm. E. Davis* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company; and *J. R. Bell, G. H. Muckley, James E. Lyons,* and *A. Burton Mason* for Suthern Pacific Company.

Report of the Commission

By the Commission:

This is an inquiry into rates and practices affecting the transportation of grain and grain products throughout the western district (on and west of the Mississippi River, including east-bank crossings) and in Illinois; from lower lake ports to Atlantic ports on ex-lake grain (grain transported across the Great Lakes to lower lake ports); and from all points in the western district to all ports of export.

Primarily the grains here under consideration are wheat and coarse grains, also flaxseed. The coarse grains are mainly corn, oats, rye, and barley. The grain products are chiefly flour and mill feeds, although the investigation includes all the grain and grain products (also seeds) contained in the carriers' comprehensive tariff list of grain and grain products shown in Appendix B. Except on some transcontinental traffic westbound and in some of the territory west of the Rocky Mountains, the rates on the products of grain, including flour, are the same as on the grains from which the products

are made. The rates on coarse grains are the same as on wheat west of the Rocky Mountains, in Illinois, and in the territory east of the Mississippi River and the Great Lakes, and 90 per cent of the rates on wheat in the plains States east of the Rocky Mountains, including the Southwest. Throughout the entire western district the practice is universal of permitting both wheat and coarse grains to be stopped for milling and other treatment in transit, at the direct rate on the grain or its product from origin of the grain to final destination of the product, except that in some parts of the Northwest an extra transit charge is made. These various situations will be referred to in more detail later.

INVESTIGATION DIRECTED BY HOCH-SMITH RESOLUTION

The proceeding is instituted under the provisions of the interstate commerce act, as directed by the Hoch-Smith resolution.[2] The testimony mainly concerns wheat. The relation of rates on wheat and coarse grains, and on grain and grain products, will be the subject of discussion under later appropriate headings. Rates referred to, unless otherwise specified, are on wheat, and are stated in cents per hundred pounds.

DEPRESSION IN AGRICULTURE

Voluminous testimony concerning conditions in agriculture, especially as affecting the wheat farmer, was offered by witnesses called on behalf of both shippers and carriers. These witnesses included farmers and representatives of farm organizations in Kansas, Oklahoma, Nevada, North Dakota, South Dakota, Minnesota, Idaho, Montana, Oregon, Washington, and other States, and men engaged in governmental, banking, scholastic, and other contacts with agriculture, some of whom we invited to give their impartial views. The range of the evidence of these witnesses covered, as of the period from immediately preceding the World War down to the then present dates, (1) the general trend of production costs and prices, and the purchasing power of the dollar, as tested by so-called indexes used in governmental and other reports; (2) bank failures, decline in land values and wheat prices, crop failures, abandonment of farms, and increases in farm and chattel mortgages in agricultural districts; and (3) general impressions of individuals concerning agricultural conditions as a whole within their personal observation. This evidence is summarized and commented on in detail in Appendix C. It is sufficient to say here that while conditions affecting the

[2] Public Resolution No. 28, 68th Congress, 43 Stat. L., 801, set forth in full in Appendix A to *Ex Parte 87, Revenues in Western District*, 113 I. C. C., 3, 49.

grain farmer had been improving within the few years immediately preceding the hearing herein there is still depression in the grain industry.

THE QUESTION OF A GENERAL RATE REDUCTION

The question here presented is whether, under present conditions, the rates on grain and grain products throughout the western district are reasonable and just and are properly related to each other and to the rates on other traffic. The answer must take into account not only comparisons of distance, transportation conditions, and ton-mile and car-mile earnings on grain and other commodities, but also whether the general level of rates on all traffic as a whole is sufficiently high to accord to the carriers the rate of return contemplated by law, including section 15a of the interstate commerce act, which we construe to permit, but not to guarantee, the carriers to earn 5.75 per cent on the fair value of the property devoted to the transportation service.

FINANCIAL CONDITION OF CARRIERS IN THE WESTERN DISTRICT

The percentage rates of return of Class I carriers in the western district, by regions, for the calendar years 1921–28 were as follows:

	Regions			
	Northwestern	Central western	Southwestern	Western district
[illegible]	1.42	4.45	3.17	3.12
[illegible]	2.78	4.07	3.27	3.45
[illegible]	3.45	4.50	3.65	3.96
[illegible]	3.12	4.21	4.34	3.87
[illegible]	3.60	4.41	4.37	4.13
[illegible]	3.83	4.86	4.56	4.45
[illegible]	3.46	4.28	3.98	3.92
[illegible]	4.04	4.59	4.32	4.35

The above percentages are computed on the investment of the carriers, as shown by their books, including materials and supplies and cash as of the beginning of the year.

For 10 railroads having 75 per cent or more of their mileage in western trunk-line territory[3] the average rate of return on book value was 2.97 per cent in 1927. In that year also, on the same basis as used in the table above, the returns for individual carriers were: 5.66 per cent for the Chicago & North Western, 4.53 per cent for the Chicago, Burlington & Quincy, 4.26 per cent for the Illinois Central, 5.06 per cent for the Atchison, Topeka & Santa Fe system,

[3] Chicago & Alton; Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Milwaukee, St. Paul & Pacific; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Green Bay & Western; Quincy, Omaha & Kansas City.

4.49 per cent for the Union Pacific system, and 3.71 per cent for the Southern Pacific Company. For the years 1921–1927, inclusive, the Oregon-Washington Railroad & Navigation Company earned 1.02 per cent on its book value. The composite earnings of the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie in 1927 yielded 4.75 per cent on our valuation, without considering subsequent investment. During the seven years after the termination of Federal control these roads were short $189,775,069 of making a 5.75 per cent return on property investment and $136,265,151 short of that return on our valuation. In the year 1927 the corresponding shortage was $12,758,736 on our valuation. The Great Northern and Northern Pacific during the 10-year period 1916–1926 added $216,144.016 to their investment, but in 1926 their net railway operating income was $3,394,410 less than for the year ended June 30, 1916, before they made this additional investment. The foregoing statements were practically undisputed upon this record.

PROPORTION OF GRAIN TRAFFIC

Grain and grain products constitute a substantial part of the tonnage of the carriers of the western district, as the following tables will show:

Grain and grain-products revenue percentage of total revenues in 1924

Western district	12.1
Northwestern region	16.3
Central western region	10.7
Southwestern region	8.9
G. N.–N. P.–Soo	20.0

Grain and grain-products percentage

	Of total carload tonnage	Of total carload revenues
C. & N. W.:		
1911–1915	13.3	19.6
1922–1926	10.9	12.6
C., M., St. P. & P., 1916	18.5	22.1
C., M., St. P. & P., 1926	10.2	11.5
C., B. & Q., 1916	17.21	18.06
C., B. & Q., 1926	13.13	12.47

Percentage of grain and grain products to total tonnage originated

	Percentage
C. & N. W. in South Dakota:	
Year 1923	39.3
Year 1926	25.1
C., M., St. P. & P. in 1926:	
South Dakota	35
North Dakota	36
Minnesota	43
Iowa	27

Proportions of agricultural products (including livestock) of total tonnage originated

	Per cent
C. & N. W. in 1923:	
South Dakota	86. 4
Nebraska	77. 7
C. & N. W. in 1926:	
South Dakota	75. 5
Nebraska	74
Minnesota	78. 4
Wisconsin	7. 8
Illinois	8. 7
C., M., St. P. & P. in 1926:	
South Dakota	74. 9
North Dakota	61. 4
Minnesota	60. 3
Iowa	49. 3

For the calendar year 1927 on class 1 railways of the western district, grain and grain products constituted of the total traffic 11.60 per cent of tons originated and 10.12 per cent of tons carried, including tonnage from connections. The grain products constituted 24.74 and 26.92 per cent, respectively, of the total grain and grain products, tons originated and tons carried.

COST STUDIES AND ANALYSES[1]

Various analyses purporting to show the aggregate costs of transporting wheat have been presented upon this record. One of these was prepared by the chief of our Bureau of Statistics, not as an official document, but as an expression of individual view. This will be referred to herein as the interstate study. It embraced the operations of all the carriers in the western district, and in Illinois, Wisconsin, and Minnesota. Another was prepared by the Minnesota Railroad and Warehouse Commission, and dealt with the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie railways, in Minnesota, North Dakota, Wisconsin, and Montana. A third was prepared by the Nebraska State Railway Commission, its three parts dealing respectively with the western trunk-line carriers, the southwestern carriers, and Nebraska. A fourth was submitted on behalf of Kansas farm organizations. A fifth was submitted on behalf of the Public Service Commission of Oregon, to show the cost of freight service of one railroad in Oregon. The interstate study was a statistical analysis of data contained in the carriers' reports to us, and an attempt to allocate costs appropriately to wheat. The studies offered by the Minnesota and Nebraska commissions and the Kansas farm organizations were of the

[1] The text under this hearing is taken practically verbatim from our report to the Senate in *Ex parte 96, Propriety of Rates Similar to Canadian Rates on Grain, Live Stock, and Other Agricultural Products in the Northwest*, Senate Document No. 183, 70 Congress, 2nd Session, in which these same cost analyses were discussed.

same general character. In connection with the first four of these analyses the final showing was of a distance scale purporting to represent the lowest scale of rates that would be justified by consideration alone of cost of service plus a 6 per cent return on that part of the property assignable to the movement of wheat, and purporting to show also that rates could be materially reduced from the standpoint of cost of service. The study submitted on behalf of the Oregon commission suggested no scale of rates, but purported to show that rates on wheat in Oregon might be substantially reduced. This study was confined primarily to Oregon intrastate shipments and was not as general in character as the other studies mentioned.

The cost formulas themselves recognize that the cost of transporting grains other than wheat, as well as flour and other grain products, which load substantially lighter than wheat, is greater than the cost of transporting wheat. In the interstate study, for a haul of 500 miles, for example, the cost of transporting flour and meal is recognized as being approximately 28 per cent higher than on wheat. Despite these differences in cost the rates on grain products, including flour, are the same, with some exceptions, as on the grain from which the products are made; the rates on coarse grains are the same as on wheat in some sections, and 10 per cent less than on wheat in others, as already stated; and grain may be milled in transit at intermediate points at the through rate, instead of at the higher combination on the milling point, without extra charge for the stopping in transit, except that on shipments from the Northwest to Puget Sound and Columbia River ports, and to Lake Superior ports and the Twin Cities, an extra milling charge of from 1.5 to 2.5 cents per hundred pounds is usually made.

It will be understood that under the theory of these analyses the showing as to any grain or grain product will be duplicated as to any other commodity of the same loading irrespective of relative values and densities of tonnage;[5] that the distance scale reflecting this analysis makes no provision for competitive routes of varying mileages or for differences in character of country, density of traffic, or other incidents of transportation; and that, in order to compensate for these contingencies, the scale would have to be increased. The carriers criticize the analyses for not taking into consideration these

[5] In other words, the showing as to wheat is based on average unit costs for commodities moving in box cars and having the load per car of wheat, and does not rest on an allocation of costs to specific movements of wheat, actually observed.

and many other things, such as the character of equipment required, the assembling of empty cars for wheat movement, the furnishing of grain doors, etc., which are important items of cost.

The contention is not advanced in connection with any of these analyses that rates should be based solely on the cost of service. It was not denied by the proponents of these studies that other considerations should also be given weight, and that the proposed distance scales merely represented, as already stated, levels of charge that would not be considered too low from the standpoint alone of the cost of service plus a 6 per cent return on investment. The Kansas farm organizations, which actively participated in this inquiry, while fully adopting the theory and results of the interstate study, expressly rejected any proposal to make rates solely on the basis of cost, and proposed a scale of rates on wheat which is substantially higher than the scale proposed in that analysis.

GENERAL SURVEY OF RATE RELATIONS REQUIRED

The record requires a general survey of the rates on grain and grain products throughout the western district from the standpoint not only of cost, but of general transportation conditions as well. The relation of rates, as well as the general level, is within the scope of the investigation. The discussion first will be mainly of wheat. It will be necessary in this connection to discuss general crop and marketing conditions in their relation to rates.

WHEAT CROP AND TREND OF MOVEMENT

The average wheat crop of the United States is approximately 800,000,000 bushels, of which about 200,000,000 bushels, in the form of wheat or flour, are exported. The country's surplus wheat is produced largely west of the Missouri River. East of that river the surplus is small, except in the Dakotas. The winter-wheat belt comprises Oklahoma, Kansas, eastern Colorado, southern Nebraska, and the Panhandle of Texas. The spring-wheat belt includes Minnesota, the Dakotas, and Montana. Both winter and spring wheat are raised in Utah, Idaho, Washington, and Oregon. The time of harvest ranges from May to October in the various localities. The heaviest movement, both to the markets and to the ports of export, is within about three months after harvest. This period is being materially shortened through the increasing use of the combine, a combination reaper and thresher. There is a later steady movement throughout the year, more particularly from the markets.

With the exception of the Washington and Oregon wheat, which moves at all times mainly to exporters and millers at Puget Sound and Columbia River ports, including Seattle, Takoma, and Portland, and of Oklahoma and Texas wheat, which moves at times to the Gulf ports direct, the initial movement is largely to interior market and milling points, such as Denver, Wichita, and Fort Worth, and to the primary markets, variously defined, such as Duluth, Minneapolis, Sioux City, Omaha, St. Louis, Chicago, and Kansas City. Wheat received at a primary market may be promptly milled or it may be resold and placed in storage. Some of it is eventually sold to other markets and to millers, maltsters, and other manufacturers of grain products in the direct, and sometimes indirect, line of flow of the wheat to final consuming territories or ports of export.

The heaviest movement of wheat, in the form of wheat or its products, is to the East. Wheat from the northern tier of States (Montana, North Dakota, South Dakota, and Minnesota) moves to the East principally through Minneapolis and Duluth. The outbound shipments from Duluth, which has a limited milling capacity, are principally of grain, which moves, during the period of open navigation, over the lakes to Georgian Bay ports, thence over rail routes to Montreal or Quebec; over the lakes to Buffalo, thence via the Welland Canal, Lake Ontario, and the St. Lawrence River to Montreal or Quebec; or over the lakes to Buffalo, thence via the New York State Barge Canal to New York, or over rail lines to New York and other eastern ports; and, during the period of closed navigation, over the rail routes through Chicago. Outbound shipments from Minneapolis are largely of flour and are over rail-lake-and-rail routes through Duluth and Buffalo, or over rail routes through Chicago.* Wheat from Colorado, Nebraska, and Kansas moves principally over rail routes through the Missouri River gateways and Chicago or St. Louis. The Missouri River gateways are Sioux City, Council Bluffs, Leavenworth, Omaha, Atchison, St. Joseph, and Kansas City. These gateways, with Minneapolis, Duluth, St. Louis, Peoria, Chicago, Milwaukee, and other important markets for grain, will be referred to as the primary markets. On the north Pacific coast, Seattle and Portland are important terminal markets.

* The water and water-and-rail routes described from Duluth are also available from Chicago and Milwaukee. The lake-cargo rates on wheat from Duluth, Chicago and Milwaukee are contract rates beyond our jurisdiction. The rail-and-lake rates on flour are tariff rates published by common carriers within our jurisdiction.

METHODS OF RATE MAKING

There are three different bases of rates available on wheat to and from the primary markets, namely, (1) combination of flat rates in and out; (2) combination of flat rates in and proportional or reshipping rates out; and (3) overhead rates with transit. These and other rate descriptive terms used herein may be defined as follows:

A flat rate is either a local rate of a single carrier or a joint rate of two or more carriers published as a unit and not dependent for application on any previous or subsequent transportation.

A proportional rate is a local or joint rate dependent for application upon (1) a previous transportation to the point from which the proportional rate applies; (2) a subsequent transportation from the point to which the proportional rate applies; (3) or both.[1] It is supposed to be a part of a through rate and is usually lower than the flat rate between the same points. When dependent upon previous inbound transportation it is applicable only upon surrender of the inbound paid freight bill showing the transportation of the shipment inbound. The freight bill need cover only an equivalent inbound tonnage, as preservation of identity grain is not required.

A reshipping rate is the same thing as a proportional rate.

An ex-lake rate is a proportional rate, applicable from lower lake ports to the East on shipments previously transported across the Great Lakes.

An overhead rate with transit is a flat or proportional rate under which shipments may be stopped at an intermediate point for marketing, milling, or other recognized transit purpose, and in the absence of which the through charge would be the lowest combination of applicable rates to and from the transit point.

A transit balance is an incident of an overhead through rate with transit. Shipments are billed inbound to the transit point at the flat rate. On the outbound shipment the amount paid is the difference between the through rate from the point of origin to final destination and the flat rate from the point of origin to the transit point. This difference is known as the transit balance.

Sometimes overhead through rates are published through primary markets on a basis different from the combinations of flat rates to the markets and proportional rates beyond. If higher than the

[1] Illustrations are proportional rates (1) from Omaha to Chicago on grain previously brought into Omaha by rail; (2) from St. Louis to Memphis on grain for subsequent shipment to the Southeast; and (3) from St. Louis to Cairo on grain previously brought into St. Louis by rail and to be subsequently shipped from Cairo by rail.

combinations, they would violate the fourth section. Sometimes they are on the combination basis and published in the form of overhead through rates for convenience. As a practical matter they are usually on the combination basis, or lower than that basis. When lower, the transit balance is of necessity lower than the proportional rate and, under the rule that an overhead 1-factor through rate takes precedence over any combination, the transit balance must prevail.

All shipments to markets (except as stated in footnote [8]) are billed in at flat rates. Whether outbound shipments are at proportional rates or transit balances depends upon the selection of the inbound freight bill. If the inbound freight bill covers a shipment from an origin point from which there is no overhead rate with transit to final destination, the outbound shipment is at the proportional rate. But grain from a point from which there is no overhead rate with transit can, under present practice, be substituted for wheat from a point from which there is such an overhead rate with transit, and can be forwarded, upon presentation of the inbound expense bill covering inbound transportation from the latter point, at the transit balance due that expense bill. The transportation service, recording of freight bills, keeping of records, and all incidents of the entire transaction of shipment to and from the primary market are the same whether the outbound shipment is at the transit balance or the proportional rate.

THE RATE-BREAK PLAN

For many years through rail rates on grain and grain products have been largely the combinations of flat rates to and proportional rates from the primary markets, or the so-called rate-break combinations. Illustrative of these combinations are flat rates to Minneapolis, proportional rates to Chicago, and proportional rates beyond; flat rates to Omaha or Kansas City, proportional rates to Chicago or St. Louis, and proportional rates beyond; and flat rates to Chicago and St. Louis, and proportional rates beyond.

There is also a natural breaking of rates over the lake ports, by the combination of flat rates to Duluth [9] or Chicago, steamer rates to Buffalo, Georgian Bay, and other lake ports, and ex-lake rates beyond.

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[8] When the combination of proportional rates between primary markets is superseded by the application of the proportional rate to the final market, with transit at the intermediate market, the inbound billing is at the proportional to the intermediate market.

[9] Shipments from certain territories to Duluth, through Minneapolis, pay the combination of flat rates to Minneapolis and the proportional rate beyond.

ORIGIN OF PROPORTIONAL RATES

The first proportional rates were the result of the competition of carriers for shipments out of primary markets of grain brought into those markets by lines with which they did not participate in overhead through rates with transit. Thus the Chicago Great Western, when it built into Omaha from Chicago, established as proportional rates from Omaha to Chicago the transit balances of through rates from west of Omaha to Chicago, with transit at Omaha, to which the Chicago Great Western was not a party. Lines operating from Omaha to Kansas City likewise published as proportional rates from Omaha to Kansas City the transit balances of through rates from west of Omaha to Kansas City, with transit at Omaha, to which they were not parties. Later proportional rates on grain and its products were established from, to, and between primary markets and established gateways, including the Missouri, Mississippi, and Ohio River markets and gateways, the lake ports, and certain interior points. Proportional rate points to-day include Sioux City, Omaha, St. Joseph, Atchison, Kansas City, Des Moines, St. Louis, Peoria, Chicago, Milwaukee, Minneapolis, Duluth, Cairo, Evansville, Memphis, and New Orleans. There are also proportional rates from the primary markets and gateways to consuming territories, such as from Omaha, Kansas City, and St. Louis to Texas, Louisiana, and Arkansas. Many of the proportionals were published for equalizing purposes.

RATE-BREAK EQUALIZATION OF ROUTES

There is a certain amount of equalization of routes and gateways under the present rate-break plan. Thus from North Dakota and Montana the rates to Chicago are the same through Minneapolis and Duluth, inasmuch as the flat rates are the same inbound and the proportional rates the same outbound. The proportional rate is the same from all of the Missouri River gateways to Chicago; also to St. Louis except that from Sioux City the rates are higher than from Omaha and Kansas City. There is a reshipping rate from Chicago to New York, applicable on all shipments with a previous rail transportation to Chicago, and reshipping rates to other north Atlantic ports on the basis of fixed differentials over or under New York. The through rate-break combination on Chicago is therefore the same from all Missouri River markets to New York and other north Atlantic ports. It is also the same through St. Louis and Peoria as through Chicago, inasmuch as the inbound

rates to St. Louis and Peoria are as much less than to Chicago as the outbound rates from St. Louis and Peoria are more than from Chicago. The situation therefore is that, except from Sioux City through St. Louis, shipments from the Missouri River gateways can move at the same aggregate charge to New York through either St. Louis, Peoria, or Chicago. The same is true of shipments from west of the Missouri River gateways, which generally move on rate-break combinations on those gateways. From eastern Colorado the rate is the same to all of the Missouri River gateways.

There is a similar equalization of routes and gateways from the Missouri River to southeastern and Carolina territories, only to an even greater extent, inasmuch as the rate-break combinations are the same through St. Louis and Memphis as through St. Louis and Cairo, Evansville, Louisville, or Cincinnati.

To Memphis, New Orleans, and other points in Mississippi Valley territory rates from Omaha are made on rate-break combinations over all intermediate markets except Kansas City—the rates to Memphis by combination on St. Louis, and the rates to New Orleans by combination on St. Louis and Memphis. From Kansas City the rates are made 1 cent less than the rates from Omaha. From Sioux City the proportional rate to Omaha is added.

A similar combination and equalization basis obtains to a considerable extent in connection with the rates from the Missouri River gateways to the Southwest. Thus, to Texas, Louisiana, and Oklahoma rates from Omaha are made by combining the proportional rates to and from Kansas City, and rates from Sioux City are made by combining the proportional rates to and from Omaha and Kansas City. To Texas and Louisiana the proportional rates are the same from St. Louis and Kansas City.

WIDE USE OF TRANSIT BALANCES

The rate-break through primary markets is not exclusively employed, however. There are, as stated, many overhead through rates with transit at the primary markets lower than the combinations on the primary markets and, therefore, many transit balances less than the proportional rates. These overhead rates apply through markets on both direct and indirect routes. The proportional rate from one primary market to another is frequently made applicable with transit at an intermediate primary market, in lieu of the combination of proportional rates to and from the intermediate market. The following are typical instances of transit balances on wheat:

1. From southern Nebraska to St. Louis and Chicago, the Omaha combinations, lower than the Kansas City combinations, are published as through rates with transit at Kansas City.

2. The flat rate of 19.5 cents from Omaha to St. Louis is applicable with transit at Kansas City upon payment of the proportional rate of 8 cents from Omaha to Kansas City and a transit balance of 11.5 cents, in lieu of the combination of proportional rates of 8 cents to and 13.5 cents beyond Kansas City. This rate, representing the proportional rate of 13.5 cents from Omaha to St. Louis, plus the flat rate of 6.5 cents to Omaha from the first station directly intermediate to Omaha, applies as maximum at points intermediate to Omaha, and produces transit balances less than the proportional beyond Kansas City from a considerable strip of producing territory directly between Omaha and St. Louis.

3. From parts of South Dakota to Chicago the rate-break combinations through Minneapolis, lower than through Sioux City, are published as through rates with transit at Sioux City.

4. From some origins south of the line of the Chicago & North Western from Mankato, Minn., west to Pierre, S. Dak., direct through rates to Chicago, less than the Minneapolis combinations, are made applicable through Minneapolis with transit.

5. The proportional rate of 17.5 cents from Kansas City to Chicago is applicable with transit at Omaha in lieu of the combination of proportional rates of 8 cents to Omaha and 17.5 cents beyond.

6. The proportional rate of 17.5 cents from Omaha to Chicago is applicable with transit at Minneapolis upon payment beyond Minneapolis of arbitraries of 11 cents on shipments to Chicago proper and 8 cents on shipments to Chicago destined to points east of the Indiana-Illinois State line, in lieu of the proportional rate of 13 cents otherwise applicable in each instance.

7. The proportional rate of 17.5 cents from Sioux City to Chicago applies with transit at Omaha, in lieu of the combination of proportional rates of 5 cents to Omaha and 17.5 cents beyond.

8. The proportional rate of 16.5 cents from Omaha to Evansville, Ind., applies with transit at Chicago upon payment of the proportional rate of 17.5 cents from Omaha to Chicago, with the result that there is no transit balance beyond Chicago, but a credit of 1 cent, which is applied on shipments from Evansville to the Southeast.

9. The export rate of 24.5 cents from Omaha to New Orleans applies with transit at Chicago upon payment of the proportional rate of 17.5 cents from Omaha to Chicago and the transit balance of 7 cents from Chicago to New Orleans.

10. There are through rates less than the rate-break combinations on Omaha, Kansas City, and St. Louis from Illinois, Iowa, and Missouri to Texas, Louisiana, and Arkansas.

11. There are through rates less than the combinations on Omaha, Kansas City, and St. Louis from west of the Missouri River to Memphis and New Orleans.

It will be understood that these transit balances apply on any grain in the primary-market elevator, upon surrender of the required inbound billing. For example, the rate on through shipments of wheat from Kansas to Chicago is the flat rate to Kansas City, plus the proportional rate of 17.5 cents beyond, but Kansas wheat stopped at Kansas City for merchandising, milling, or other purpose, may move out of Kansas City to Chicago at 9.5 cents upon surrender of an expense bill showing the inbound shipment of an equivalent amount of wheat from Omaha to Kansas City.[10] Therefore, the statement frequently made that rates from trans-Missouri territory to the East are combinations on the Missouri River markets is misleading. It is true that the usual basis of charge from that territory to the Atlantic seaboard is the combination on some Missouri River market, and on Chicago and St. Louis, under the equalization basis hereinbefore described; but it is not true that all grain shipped outbound from the Missouri River to Chicago and St. Louis pays the proportional rates. On the contrary, a substantial, if not the greater, part of the outbound tonnage from the Missouri River to both Chicago and St. Louis pays transit balances less than the proportionals. The same situation largely obtains in respect of shipments outbound from Minneapolis that have been stopped at that market.

To the Southwest transit balances also apply on a substantial percentage of the total traffic beyond Omaha, St. Louis, and Kansas City. The proportionals from Kansas City to the Southwest appear in fact to be rarely used. To this territory there is a similar use of the transit balance in lieu of the proportional rate from Cairo, Ill., and Memphis, Tenn.

To the Mississippi Valley, including Memphis and New Orleans, the situation is largely the same. To New Orleans the rates are less than the combinations on Omaha or Kansas City from Nebraska and from parts of northern Kansas. To both Memphis and New Orleans the rates are lower than the combinations on Kansas City from southern Kansas, and transit balances of these rates from Kansas City and St. Louis afford the only means of those markets reaching the Mississippi Valley with wheat and flour from west of the Missouri River. The Mississippi Valley adjustment will be referred to in more detail later.

[10] The proportional rate to Chicago is 17.5 cents from both Omaha and Kansas City. The proportional rate from Omaha to Kansas City is 8 cents. The 9.5 cents is the transit balance beyond Kansas City of the proportional rate of 17.5 cents from Omaha to Chicago, applied with transit at Kansas City.

It will be seen that, because of overhead through rates less than the rate-break combinations, the proportional rates from and between the primary markets have come largely into a state of disuse. To the Southwest and the Mississippi Valley this is due largely to the general percentage revisions of rates beginning with General Order No. 28 of the Director General of Railroads, which increased wheat rates 25 per cent, subject to a maximum increase of 6 cents. Many of these rates, published as overhead rates on the combination basis, were increased less than the aggregate increase in the components, and therefore became less than the rate-break combinations.[11] The market combinations were largely restored by freight-rate authority No. 7908 of the Director General of Railroads on December 31, 1919, but the remaining differences were affected by subsequent general percentage revisions. The combinations on the markets to the East were not published as overhead through rates, and the through rates did not become lower than the combinations as a result of these percentage revisions.

From Colorado, Nebraska, and Kansas to the Mississippi Valley an even greater disturbance of the relation between through rates and rate-break combinations resulted from *Rates to, from, and between Points South of Ohio River*, 64 I. C. C. 306. As a result of that proceeding the proportional rates from St. Louis to Memphis and New Orleans were substantially increased, Omaha was continued on the St. Louis combination, and Kansas City was continued 1 cent under Omaha. Similar increases were made in the flat rates from Omaha and Kansas City, but from points west of the Missouri River the increases were limited to points from which the through rates were lower than the increased flat rates from Kansas City and Omaha, which were published as maxima, although through rates from South Dakota, Minnesota, Illinois, Iowa, and northern Missouri were continued on the St. Louis combination, and therefore reflected the full increases from St. Louis.

An important issue in this proceeding is whether the rates through the primary markets shall be made on the combination of flat rates to and proportional rates from the markets exclusively, or in part, or at all. There are proponents and opponents of each of these methods.

OBJECTIONS TO THE RATE BREAK

The main criticism of the rate break seems to be that the proportional rate can not be a reasonable addition to all inbound flat rates.

[11] For example, an overhead through rate of 50 cents was increased a maximum of 6 cents, and the components of 16 cents and 34 cents were increased 4 cents (25 per cent) and 6 cents (the maximum), respectively. From Kansas to Kansas City the maximum increase was 3 cents. The coarse-grain rates were increased to the wheat bases, where lower than that basis.

In other words, the flat rates into the markets, especially for the longer hauls, if continued at the rate of progression ordinarily used in a distance scale, would produce a through rate lower than that produced by the addition of the proportional. The proponents of this view are mainly shippers for the longer distances and certain of the State commissions. Nevertheless, these parties, with few if any exceptions, want the privilege of stopping shipments at the overhead rates at the intermediate primary markets. Most of them have no objection to breaking the rate at the primary market if its volume does not exceed a reasonable overhead rate level.

PROPONENTS OF PROPORTIONAL RATES

Other shippers and State commissions favor the rate break. The primary markets want the rate break, and some of them also want overhead through rates less than the rate-break combinations in some instances. Kansas City especially advocates the fullest possible application of its outbound proportional rates, not only as a preserver of Kansas City as a futures market, but as a stimulator of the futures price, and therefore of the directly related cash price paid to the producer. The situation in this respect is said by the primary markets, as we interpret their testimony, to be substantially as follows:

CASH AND FUTURES MARKETS

There are two kinds of primary markets, cash and futures. Futures markets are price-registering markets, and are also cash markets. The futures price is largely what the name implies, namely, the price of grain in some future month. On storage grain purchased in July, for example, the cash price is usually the September futures price minus the interest, storage, and insurance charges necessary to carry July wheat until the futures delivery date in September. The futures price is influenced by world conditions of supply and demand, and by the transactions of the futures traders, who make a business of buying and selling futures grain for a rise or fall in price. The cash operator, on the other hand, purchases grain for subsequent resale at a merchandising and storage profit of a few cents a bushel, not dependent on wide changes in price. As a matter of fact he protects himself from wide fluctuations by hedging, a form of insurance, which transfers much of the risk of substantial price change to the futures trader.[12] Thus the cash

[12] Hedging is said to be a necessary incident of the successful operation of cash-grain dealing, and is practiced by practically all of the cash-grain dealers, and by many of the millers and country elevators. The extension or amount of bank loans on grain is materially influenced by whether or not the grain is hedged. Hedging covers only the contract grades of wheat and not the premiums frequently paid for the higher grades.

trader purchases a quantity of cash wheat for later merchandising and immediately hedges it by selling an equal amount for future delivery, at a futures price representing the cash price plus the interest, storage, and insurance necessary to carry the cash wheat to the date of delivery under the futures contract. He is thereby assured of a sale of his purchased wheat for at least as much as he paid for it, plus his storage profit, if he can not in the meantime resell it as cash grain at a merchandising profit. If, as usually happens, he can remerchandise the cash grain prior to the date of its delivery under the futures contract, the necessity for his hedging insurance has terminated, but he is still obligated to deliver, under his futures contract, the amount of grain he has merchandised and therefore no longer has. He accordingly makes constructive delivery by purchasing the required amount of grain in the futures market, and thereby closes out his hedge.

Any profit from the sale of the cash grain, in addition to his merchandising and storage profit, is offset by the increased price of his repurchased grain under the second futures contract. Any loss from the sale of the cash grain is similarly offset by the reduced price of his repurchased grain under the second futures contract.[13]

DELIVERIES UNDER FUTURES CONTRACTS

In some instances cash grain is not sold prior to the date of delivery under the futures contract of sale entered into when the cash grain is purchased, and the cash grain is actually delivered under the futures contract of sale. It is then competitive with other cash grain. Out of the market it always pays the proportional rate, whereas much of the other outbound cash grain moves on transit balances.[14] The price under the futures contract must take into account the certain payment of the highest outbound charge on any grain delivered under that contract, and it therefore tends toward a lower level than it would reach if all outbound grain paid the same charge. This lower level of the futures price corresponds-

[13] Hedging is an incident not only of cash grain purchased for storage and merchandising, but also of the sale of grain which has not yet been accumulated. Thus an exporter who sells a cargo of wheat which he has not yet accumulated immediately buys the wheat in the futures market, and when he buys the required amount of cash grain prior to the date of delivery under his futures contract he closes out his hedge by selling the required amount of futures. Here again any loss or gain in the cash transactions is counterbalanced by a corresponding gain or loss on the futures contract, and the hedger is merely provided with a substantial insurance against price fluctuations. There are similar hedging transactions by millers who sell flour in advance of their accumulation of the required amount of wheat to be ground.

[14] This is because the futures contract merely requires delivery of grain of a certain grade, regardless of its origin, and the dealer making the delivery naturally surrenders for its outbound movement inbound billing calling for the highest basis of outbound charge, which is the proportional rate, and reserves to himself for his own outbound shipments the more favorable inbound billing calling for the application of transit balances.

ingly affects the directly related cash price, which is the price paid to the producer.

EFFECT OF TRANSIT BALANCE ON FUTURES MARKET

The foregoing situation is particularly emphasized by Kansas City, which operates to a large extent on transit balances, and which is apprehensive that the discrimination in favor of the outbound shippers under transit balances, and against the outbound shippers of grain delivered under futures contracts, at the higher proportional rates, may eventually reach the point of preventing deliveries on futures contracts, and drive the professional trader and the hedger out of the Kansas City market, and thereby eliminate Kansas City as a futures market. It is said that Kansas City's price would then be merely the Chicago price minus the freight rate from Kansas City to Chicago, whereas today, by reason of the location of Kansas City closer than Chicago to much of the grain-producing territory, and by reason also of the greater demand for grain at Kansas City than at Chicago from the Southwest and certain other localities, the futures price at Kansas City is higher than the Chicago price minus the freight rate from Kansas City to Chicago, and is therefore relatively higher than the price at Chicago.[15]

EFFECT OF FUTURES MARKET ON CASH PRICE

Some of the foregoing statements of the primary markets concerning the operation of the futures markets have been challenged of record. It is unnecessary to attempt to resolve these differences. The issue here as to the rate break goes beyond the status of any primary market as a futures market. It may perhaps be taken as established, however, that the practice of hedging, in view of the present operations of the futures market, does tend to keep to a minimum the difference between the purchase and sale prices of grain, to the benefit of both producer and consumer. In other words, in the absence of the substantial measure of insurance against price fluctuations now afforded by hedging, the margin between the purchase price of the grain at the country station and its ultimate sale price by the grain dealer to the consumer would have to be sub-

[15] The term "futures trader" as used in the foregoing discussion refers primarily to the futures trader commonly known as the speculator, who ranges from the big operator who attempts to corner the market, to the ordinary citizen, who also thinks he can outguess the market in his more modest operations. The term "speculator" is not used in the text, because many of the futures sales and purchases are hedging transactions of the cash-grain dealers as an insurance against speculation, though it is not intended to say that hedgers do not also at times speculate. The speculator is said to be a necessity of the futures market in swelling the volume of grain trading to the point of ability to absorb the hedging transactions and give so-called liquidity to the market.

stantially increased, doubtless at the expense of the producer, in a lower price offered at the country station.

RATE TO FIRST MARKET APPARENTLY MOST IMPORTANT TO PRODUCER

The producer's country price is generally said to be the market cash price minus the freight and handling charges into the market. On such a basis it follows that a reduction in the inbound rate to the market would benefit the producer, if the market price remained stationary. Whether that price would be affected by a widespread reduction of inbound rates is a matter of some speculation. The weight of the evidence seems to be that the market price would perhaps be more affected by a change in the outbound than in the inbound rate. The effect upon the producer of any change in rates is more or less speculative, but the record seems clearly to indicate that any substantial benefit to the producer would more likely come from a reduction in the inbound rate than from any other revision.

RATE BREAK PRESERVES CARRIERS' REVENUES

It is believed that making rates through primary markets exclusively by combination of flat rates to and proportional rates from the markets, would not only preserve, but would substantially increase, carriers' revenues, even with substantial reductions in both the inbound flat rates and the outbound proportionals, because of the discontinuance of transit balances much lower than the proportionals. This statement may be challenged as resting on the false premise of no change in the present channels of movement. But there is a certain amount of grain to be moved through the primary markets, and it seems reasonably clear that the advantages and disadvantages of a changed current of traffic would be rather well equalized between markets, carriers, and shippers. Such a change might be of decided advantage to originating lines in many instances. For example, grain now carried by the North Western to Omaha, thence by the Missouri Pacific to Kansas City and the Santa Fe beyond, with transit at Kansas City under the proportional rate from Omaha, would more likely be retained to the North Western's own rails for further carriage from Omaha to Chicago under a strict application of the rate break and the resulting higher charge over the route through Kansas City than from Omaha direct. Similarly, grain now carried by the Santa Fe to Kansas City, thence by the Missouri Pacific to Omaha and the North Western to Chicago, with transit at Omaha under the proportional rate from Kansas City, would more likely be retained to the Santa Fe for further transportation from Kansas City to Chicago under the same strict application

of the rate break [16] and the resulting higher charge over the route through Omaha than from Kansas City direct.

AS TO PROPRIETY OF BOTH PROPORTIONAL RATES AND TRANSIT BALANCES

The propriety of the present dual system of proportional rates and transit balances from the markets is open to question from the standpoint of orderly tariff procedure. It may be argued that the transit balance as well as the proportional rate is specifically provided for by tariff. But we are charged with the proper regulation of the construction of tariffs, and with the prevention of abuses in tariff administration, as well as with the prevention of undue preferences between outbound shippers. We clearly are empowered to say whether, in all the circumstances affecting the grain traffic, proportional rates shall be employed exclusively, or in part, or at all.

TRANSIT BALANCE AT PRIMARY MARKETS A DISORGANIZER OF RATES

The transit balance at primary markets has always been a source of disorganization of rates.[17] It gave rise to the proportional rate, as a result of carriers from the markets, not parties to the overhead rate, publishing the transit balance as a proportional rate. Certain of the carriers to-day publish what are known as varying proportional rates, restricted to apply only on grain from specified territories from which there are overhead through rates in which they do not participate. There are requests upon this record for the translation of some of the existing transit balances into open proportional rates. Just so long as transit balances remain a substantial factor in the adjustment of rates from the primary markets, just so long will there be undue preferences between outbound shippers, as well as general instability in rates resulting from shippers seeking the

[16] Proportional rates are 17.5 cents from Omaha to Chicago, 8 cents from Omaha to Kansas City, and 17.5 cents from Kansas City to Chicago. Under present transit regulations a shipment from Omaha to Chicago can be stopped for remerchandising or milling at Kansas City upon payment of 8 cents inbound and a transit balance of 9.5 cents outbound (as already explained in footnote 10), in lieu of the rate-break combination of 8 cents plus 17.5 cents.

[17] In *Matter of Alleged Unlawful Rates and Practices*, 6 *I. C. C.* 225, we declared transit balances inapplicable on shipments billed locally to the primary market. In *Re Rates and Practices of M. & O. R. Co.*, 9 I. C. C. 373, we questioned the propriety of, but did not condemn, the proportional rate, published separately as such. In *In Re Substitution of Tonnage at Transit Points*, 18 I. C. C. 280, we characterized the application of a separately published rate on shipments "from beyond" as "still open to some legal objection," but "so much in advance of the transit privileges general throughout the country that it may well be accepted as a model for traffic managers desirous of remedying chaotic and unlawful practices upon their lines. The Commission is convinced that in no other way can transit to and from the large storage markets be arranged unless carriers are to take an impossible burden of policing and supervision and shippers be subjected to extremely annoying rules." In *Transit Cases*, 24 I. C. C. 340, we laid down certain general rules governing transit and recognized, inferentially, the lawfulness of both proportional rates and overhead rates with transit.

translation of transit balances into proportional rates. Prior to General Order No. 28 of the Director General of Railroads, already referred to, rates were generally on the combination basis, and there was a minimum of complaint against this method of rate adjustment. A return as closely as practicable to that basis would go far toward eliminating much of the complaint that has arisen from time to time concerning the relation of rates through the various primary markets. The best interests not only of the primary markets, but of the producer, consumer, and carrier will be served by the fullest possible application of the rate-break combinations through primary markets.

APPLICATION OF PROPORTIONAL RATES REQUIRED FROM PRIMARY MARKETS

We find that the practice of contemporaneously charging both proportional rates and transit balances subjects the shipper under proportional rates to undue prejudice and disadvantage, and gives to the shipper under the lower transit balance an undue preference and advantage, from which the carriers will be required to cease and desist; that the through rates herein prescribed, on the basis of flat rates to the primary markets and proportional rates beyond, will be reasonable; and that overhead through rates less than those combinations should be canceled.

EXCEPTIONS TO PERMIT CARRIER COMPETITION

The foregoing finding is not intended to prevent carrier competition that does not disrupt the basis of making rates by combination on the primary markets. Thus the combination on a given market may be applied as a through rate through another market on which the combination is higher than on the market first mentioned, provided that the shipment is not stopped in transit at the market or other intermediate point on the route over which the higher combination obtains; but if the shipment is stopped at either the market or other intermediate point on the latter route, the higher combination must be applied. Similarly, a proportional rate from one market to another may be applied over a competitive route through a third market on which the combination is higher than over the direct route, provided the shipment is continuous, but the higher combination of proportional rates to and from the third market will be applied on shipments stopped there or at any other intermediate point for transit purposes on that route.

ADJUSTMENT TO MISSISSIPPI VALLEY AND SOUTHEAST

In connection with the general discussion of the rate break the adjustment of rates from Omaha, Kansas City, and St. Louis to the

Mississippi Valley locally and for the Southeast requires extended comment. From Omaha the proportional rate to Memphis is the combination on St. Louis, and the proportional rate to New Orleans is the combination on St. Louis and Memphis, but the proportional rate to either Memphis or New Orleans is not the combination on Kansas City. The rate from Kansas City is only 1 cent less than from Omaha to both Memphis and New Orleans, whereas if the rate from Omaha were the combination on Kansas City the rate from Kansas City would be lower than from Omaha by 8 cents on wheat and 7 cents on coarse grains, the proportional rates from Omaha to Kansas City, just as the rates from St. Louis are less than from Omaha by 13.5 cents on wheat and 12 cents on coarse grains, the proportional rates from Omaha to St. Louis. Kansas City requests that the rates from Omaha be made on the Kansas City combination, and that the Mississippi Valley rates be revised in this way: On wheat publish as a reduced proportional rate from Memphis to New Orleans the transit balance from Memphis to New Orleans of the present overhead rate (less than the Kansas City combination) from Wichita to New Orleans; add the present proportional rates from St. Louis to Memphis and from Omaha to St. Louis to get the proportional rate from Omaha to New Orleans; subtract the present proportional rate from Omaha to Kansas City to make the proportional rates from Kansas City to Memphis and to New Orleans; and finally break the new proportional rate from Kansas City to New Orleans on Memphis; on coarse grains make the proportional rates between all of the above markets 90 per cent of the rates on wheat; then let the rates from west of the Missouri River and from other origin territories break on whichever market makes the lowest combination.

PROPOSED READJUSTMENT BASED PRIMARILY ON ALLEGED NECESSITY AS TO COARSE GRAINS

The contentions of Kansas City in support of its proposals are substantially as follows:

The proposed readjustment is requested mainly because of the situation as to coarse grains. The price of coarse grains at Kansas City is higher than at Omaha by the amount of the proportional rate of 7 cents from Omaha to Kansas City, which requires a rate outbound from Kansas City 7 cents less than from Omaha, if Kansas City is to compete with Omaha on coarse grains in the Mississippi Valley. The price at Kansas City is set on this basis because Kansas City finds it necessary each year to buy grain in the so-called north

Omaha area of northwestern Iowa, southern Minnesota, southern South Dakota, and northern Nebraska, from which the rate to Kansas City is the combination on Omaha. The Omaha combination from this territory is the highest inbound rate paid on any coarse grains into Kansas City and must be reflected in the price paid for all coarse grains received at Kansas City. Under the present adjustment of 1 cent from Kansas City less than from Omaha the Kansas City dealer is at a disadvantage of 6 cents in selling grain in the Mississippi Valley, if the shipments move on the proportional rate from Kansas City, and he therefore uses transit on the rate from Omaha. This requires shipments to originate at or to be routed through Omaha, and Kansas City can not procure sufficient grain under these conditions to satisfy her demands, either from the north Omaha area or from the important coarse-grain territory south of the Platte River in Nebraska. The proposed rates would be combinations on Omaha and Kansas City from the north Omaha area, and combinations on Kansas City from the south Platte area, and would require Omaha to transit on the inbound rate to Kansas City from the south Platte area. Kansas City is on the direct route from both the north Omaha area and the south Platte area, whereas Omaha is on the direct route only from the north Omaha area, and it is more reasonable to require Omaha to transit from the south Platte area than to require Kansas City to transit, as at present, from both the north Omaha area and the south Platte area.

DIFFERENT SITUATION AS TO WHEAT

The contentions of Kansas City as to wheat are substantially as follows:

The proposed rates on wheat are governed by southern Kansas, and not by the north Omaha area. The rates from southern Kansas to the Mississippi Valley are less than the combinations on Kansas City, and lower than from northern Kansas, and both Kansas City and St. Louis can reach the Mississippi Valley on wheat [18] only on transit balances of the southern Kansas rates, as already stated. These rates do not apply through Omaha, and Omaha is not an important competitor of Kansas City on wheat in the Mississippi Valley. St. Louis would be required to transit under the proposed proportional rate from Kansas City to Memphis, or on through rates from southern Kansas made on the Kansas City combination, instead of on through rates from southern Kansas, less than the combinations on Kansas City, as at present.

[18] This discussion includes flour, which moves at the wheat rates.

OBJECTIONS TO KANSAS CITY'S PROPOSAL

Both Omaha and St. Louis object to the proposal of Kansas City as giving a monoply to Kansas City on coarse grains from the south Platte area. They challenge the assertion of Kansas City that the price of corn is usually higher at Kansas City than at Omaha by the amount of the proportional rate of 7 cents from Omaha to Kansas City, though they apparently concede the accuracy of the assertion as to oats.

PROPORTIONAL RATE FROM OMAHA TO ST. LOUIS IS KEY TO SOUTH PLATTE SITUATION

The situation as to the Mississippi Valley presents exceptional difficulties, in view of the adjustment of rates from the south Platte area through Omaha to St. Louis. The present proportional rate of 13.5 cents from Omaha to St. Louis for 414 miles is also the proportional rate from Kansas City to St. Louis for 278 miles, and the rates from Nebraska to Omaha, by agreement of Omaha, Kansas City, and the carriers, are relatively higher than they would be if the rate from Omaha to St. Louis were on a basis better proportioned to the rate from Kansas City to St. Louis from the standpoint of relative distances. Chicago is contending that, by comparison with the rate of 17.5 cents from Omaha to Chicago, for 487 miles, the rate from Omaha to St. Louis, for 414 miles, should be increased, or the rate from Omaha to Chicago reduced. Omaha urges that if the rate from Omaha to St. Louis is to be increased the inbound rates from Nebraska to Omaha should be reduced, and that if the rates from Kansas City to the Mississippi Valley are to be made 8 cents on wheat and 7 cents on coarse grains less than from Omaha, the rates from Omaha to Minneapolis and Duluth should correspondingly be made 8 cents on wheat and 7 cents on coarse grains less than from Kansas City, in lieu of the present differences of 1 cent to Minneapolis and 1.5 cents to Duluth. Kansas City would differentiate the latter situation on the ground that the rates from the Missouri River to Minneapolis and Duluth are merely parts of through rates to the East over routes alternative with the direct routes through Chicago and St. Louis, and that the longer distances over those routes than over the direct routes are comparable with the longer distance from Omaha through St. Louis to the East than from Kansas City through St. Louis to the East.

RATES TO MEMPHIS FOR THE SOUTHEAST

What has been said about the Mississippi Valley applies equally to southeastern and Carolina territories, to which the rates are com-

binations on Memphis, except that the rates from St. Louis, Omaha, and Kansas City to Memphis for the Southeast are 2.5 cents less than to Memphis proper on wheat and coarse grains, due to *Rates to, from, and between Points South of Ohio River*, already referred to, increasing the proportional rate from 9 cents to 11.5 cents on both wheat and coarse grains from St. Louis to Memphis proper, but making no change in the rates from St. Louis to Memphis for the Southeast, which were not in issue. Kansas City's proposal is to continue this relative adjustment and to make the rates from Kansas City to Memphis for the Southeast correspondingly lower than from Kansas City to Memphis proper.[19]

The rates from St. Louis and points basing thereon to southeastern and Carolina territories are the same through Cairo as through Memphis, due to the rates from St. Louis being as much lower to Cairo than to Memphis as the rates from Cairo are higher than from Memphis. In other words, the rates from St. Louis to Memphis for the Southeast are 9 cents on both wheat and coarse grains, and from St. Louis to Cairo for the Southeast 3 cents on both wheat and coarse grains, the difference of 6 cents in favor of Cairo inbound offsetting a difference of 6 cents against Cairo outbound.

Omaha, Kansas City, and St. Louis are more interested in the differentials from Kansas City under Omaha to Memphis than to New Orleans, because Memphis is the main Mississippi Valley gateway to the important consuming territory of the Southeast.

RATE-BREAK COMBINATIONS TO THE MISSISSIPPI VALLEY

The short-line distance from Omaha to Memphis is 675 miles, and is through Kansas City, 196 miles south of Omaha. The route through St. Louis is about 40 miles longer. From a transportation standpoint the rates from Kansas City should be less than from Omaha by the amount of the proportionals from Omaha to Kansas City rather than by the present 1 cent. That is the adjustment from Kansas City to Texas and Louisiana (other than Mississippi River points). From the south Platte area to Arkansas the rates reflect the equivalent of that adjustment.[20] The rates from Omaha to Mem-

[19] The present proportionals on both wheat and coarse grains from St. Louis are 11.5 cents to Memphis proper and 9 cents to Memphis for the Southeast. The proposal of Kansas City is to make the rate on coarse grains 90 per cent of the rate on wheat to Memphis proper, the rate on wheat to Memphis for the Southeast 2.5 cents lower than on wheat to Memphis proper, and the rate on coarse grains to the Southeast the same as on wheat to the Southeast, that is, 11.5 cents on wheat and 10.5 cents on coarse grains to Memphis proper, and 9 cents on both wheat and coarse grains to Memphis for the Southeast.

[20] The proportional rates from Kansas City are less than from Omaha by 8 cents on wheat and 7 cents on coarse grains to Texas and Louisiana (other than Mississippi River points) and by 4.5 cents on wheat and 4 cents on coarse grains to Arkansas, but rates from the South Platte to Arkansas are so adjusted as to produce from Kansas City transit balances 8 cents on wheat and 7 cents on coarse grains less than the moving rates from Omaha.

phis and New Orleans should be combinations on Kansas City, and the rates from Kansas City to New Orleans should be combinations on Memphis. There is no justification for breaking the rates from Kansas City to Memphis and New Orleans on St. Louis. A difference of not to exceed 2 cents against St. Louis would be justified.

We find that the present relation of rates from Omaha and Kansas City to the Mississippi Valley, including Memphis and New Orleans, subjects Kansas City to undue prejudice and disadvantage, and gives to Omaha an undue preference and advantage, and that rates free from undue prejudice and disadvantage will be in accordance with the findings herein.

REVERSAL OF PREVIOUS FINDINGS

The foregoing findings as to the Mississippi Valley reverse our previous findings on the same general issue in three separate proceedings;[21] but the action here taken is justified by the broader showing of this record as to both inbound and outbound rates through the interested markets, and by the broader showing also as to the relation of this adjustment to the general adjustment of grain rates as a whole. In the last decision on the subject we recognized the inadequacy of the differential of 1 cent from Kansas City under Omaha to the Mississippi Valley, but denied the prayer of complainant for a wider differential largely because the through rates from the country points to final destinations were not in issue.[22] Nor was the effect of the adjustment upon the producer as fully developed in the other proceedings as it is upon this record.

RELATION OF WHEAT AND COARSE GRAINS

The foregoing discussion has been of the method of construction of rates through primary markets from which there are proportional rates. Before discussion of the general level of the flat rates to the primary markets and proportional rates between and beyond these markets, that compose the components of the rate-break combinations herein required, and of direct rates not made by market combinations, attention should be directed to the relation of rates on

[21] *Kansas City Transportation Bureau* v. *A. T. & S. R. Ry. Co.*, 16 I. C. C. 195; *Board of Trade of Kansas City* v. *St. L. & S. F. R. R. Co.*, 32 I. C. C. 297; *Kansas City Board of Trade* v. *A. & W. Ry. Co.*, 102 I. C. C. 285.

[22] "Having in mind the respective distances from Kansas City and Omaha to Memphis and other Mississippi River crossings and to many points in southern territory, it appears that a difference of 1 cent, Kansas City under Omaha, is insufficient and does not adequately reflect the difference in distance. But on the other hand complainant's contention is that the proportional rates from Kansas City should be a fixed difference of 7 cents under Omaha regardless of the total haul involved and regardless of the origin of the grain. We have repeatedly held that proportional rates are but factors of through rates and in many cases have declined to deal separately with one factor of a through rate where the through rate itself is not in issue."

wheat and coarse grains, and on grain and grain products, and to transit, as important factors of the readjustment to be hereinafter prescribed.

It has already been stated that present rates on coarse grains are the same as on wheat west of the Rocky Mountains and in Illinois, and 90 per cent of the rates on wheat in the plains States east of the Rocky Mountains, including the Southwest. It is clear that a point may be reached in reduced rates on wheat that would not justify a further reduction of 10 per cent in the rates on coarse grains. On the other hand, reduced wheat rates, if otherwise warranted, should not be withheld because of inability to preserve the 90 per cent relation on coarse grains. In *National Council Farmers Asso.* v. *Director General*, 56 I. C. C. 399, wheat and coarse grains were accorded the same rate. In *Grain, Grain Products And Hay*,[23] 64 I. C. C. 85, half of the increase permitted in *Increased Rates 1920* was removed and rates on coarse grains were reduced 10 per cent below the wheat rates, the reductions averaging about 13 per cent on wheat and 21.7 per cent on coarse grains. In the latter case the departure from the finding in the *National Council Farmers Asso. Case* as to the relation of rates on wheat and coarse grains was held justified on the ground of changed relation of values of wheat and coarse grains.

The importance of the coarse-grain relation to wheat is shown by the fact that for the years 1921–1925, inclusive, the coarse-grain proportion of total grain production was 90 per cent in South Dakota and Minnesota, 55 per cent in North Dakota, 86 per cent in Nebraska, and 60 per cent in Kansas. *Grain And Grain Products*, 122 I. C. C. 235, 282. The proportion of coarse-grain tonnage is also heavy in Iowa and Illinois. The proportion of the total grain traffic affected by the reduction of 21.7 per cent on coarse grains, referred to, was 70 per cent on the North Western, 60 per cent on the Burlington, 58 per cent on the Minneapolis & St. Louis, 55 per cent on the Milwaukee, 50 per cent on the Burlington, 27 per cent on the Santa Fe, 24 per cent on the Great Northern, and 20 per cent on the Northern Pacific. The carriers point out that the unfavorable financial showing among the carriers is most pronounced with the important coarse-grain carriers, whose rates were most affected by that reduction.

A comparison of operating results does suggest that the relatively low level of coarse-grain rates is at least partially responsible for the unfavorable financial showing of the coarse-grain carriers, especially in western-trunk-line territory. For instance, in a group of 21 car-

[23] On further hearing in that proceeding, 80 I. C. C. 363, the Mountain-Pacific group, and rates between the Mountain Pacific and western groups, were excepted from the finding that rates on coarse grains should be 90 per cent of the rates on wheat.

riers with combined annual freight revenues of approximately $2,600,000,000, 9 of them, with relatively low coarse-grain tonnage, exceeded their statutory return by nearly $35,000,000, while the other 12, with a large coarse-grain tonnage, were short of their statutory return by more than $75,000,000.

It has been suggested that the unfavorable showing of some of these carriers is the result of unduly increased maintenance charges. The figures of certain of these carriers do suggest maintenance charges that were at least liberal, and some that might be characterized as excessive, but the figures of the carriers in the western district as a whole do not demonstrate overmaintenance. As to some of the coarse-grain carriers they rather suggest undermaintenance. The ratio of maintenance charges to operating expenses of all carriers in the western district is slightly below the ratio for all Class I carriers in the United States. It exceeds the ratio of the Canadian National system by only a small amount. Comparison is made with the Canadian ratio because it may be assumed that the Canadian National, government owned and operated, would not be maintained beyond the point of maximum economy and efficiency.

From a transportation standpoint there is no justification for rates on coarse grains 10 per cent lower than on wheat. Coarse grains load lighter than wheat. Perhaps the main argument in favor of the differential is the somewhat lower value. Substantial justice can best be done to shippers of both wheat and coarse grains by one rate on both classes of traffic. In this way wheat rates can be reduced to a level justified by the showing of this record as to wheat, and border-line discriminations between States can be best removed.

We find that the rates on wheat and coarse grains are unreasonable to the extent they exceed the rates prescribed in Appendix D, to be later referred to.

RELATION OF RATES ON GRAIN AND GRAIN PRODUCTS

The rate on flour is the same as on wheat except that between certain parts of the Mountain-Pacific group, and from east of the Rocky Mountains to Pacific coast territory, the flour rates are 7 cents higher than on wheat. From the standpoint of relative loadings, values and general transportation characteristics the propriety of this equalization might be questionable. Arguments in favor of the adjustment are that it conduces to shorter hauls on wheat and the prompt return of empty cars, provides additional wheat storage at mills near the wheat fields, promotes the prosperity of the smaller country towns, supplies offal to the farms, and stimulates country prices through the millers' competitive buying, frequently at premium prices. One of the arguments most emphasized is that a flour

differential would tend eventually to move the milling industry to the more populous sections of the East. The carriers which now transport wheat and flour at the same rate are not proposing a differential for flour.[24]

The rates on the direct products of coarse grains are usually the same as on the coarse grains from which the products are made. The charging in some instances of coarse-grain rates on bran, shorts and middlings, the by-products of wheat milled in transit, will have separate consideration later.

We find that the rates on wheat and coarse grains and their products are unreasonable to the extent they exceed the rates prescribed in Appendix D.

TRANSIT

Transit is a common practice at both market and interior milling points. It is accorded in connection with both flat and proportional rates, over both direct and indirect routes, frequently with extensive back-haul and out-of-line service[25] and, except in the Northwest (to be discussed later), without charge other than the compensation included in the line-haul rate. The transit stop is for a variety of purposes, including inspection, conditioning, storing, milling, feed mixing, and partial unloading. There is no general rule or practice governing the purpose or number of such stops, each carrier dealing with requests for transit according to the facts in each case. Sometimes successive stops are permitted by each carrier in a through route. Present transit practices are accordingly far from uniform, and are the subject of wide complaint of discrimination upon this record.

Some contend that transit rules and practices should attain some reasonable approach to uniformity throughout the entire western district and propose rules governing some of the phases of transit. Others urge that no general rule would be practicable, and that the discretion of the carrier should continue to control individual situations. Still others urge the assessment of a separate charge for the users of transit and a consequent lifting of the alleged burden of higher rate level that transit occasions.

[24] Flour mills in California and grain and milling interests in Texas favor a flour differential. Some California flour mills would increase it. The largest flour mill in California and the southwestern millers oppose a differential. California is a deficit wheat State, and the equality of wheat and flour rates, according to the proponents of the differential, tends to render less profitable the milling of wheat in California, and to deprive the California millers of the only distributing territory reasonably available to them, which is in California.

[25] By back haul is meant a diversion from the direct route of shipment to a transit point and back to the point of diversion for continuation over the direct route; by out-of-line haul a diversion from the direct route to a transit point and back to the direct route at a point other than the point of diversion; and by circuitous route a route considerably longer than the direct route.

The situation is a difficult one, especially from the standpoint of carrier competition.[26] In some instances the practices indulged are plainly unwarranted.[27] A strict rule governing all phases of transit will not be undertaken at this time, but some limitations are here deemed necessary. The carriers transit rules should provide for (*a*) a maximum of two free stops in transit (plus one inspection) of grain for storage, conditioning, and milling into its direct products, additional stops to be paid for at the rate of 2 cents per hundred pounds for each stop other than for inspection; (*b*) reasonable limitation of out-of-line and competitive routes and back hauls; and (*c*) elimination of little-used and obsolete transit provisions that serve mainly as a basis for unreasonable requests for transit and to bring censure upon transit tariffs generally. A stop at a primary market from which there are proportional rates will be viewed as any other transit stop.

We find that present transit practices are unreasonable and unduly preferential and prejudicial to the extent they are not in harmony with the foregoing conclusions.

SEPARATE TRANSIT CHARGE IN NORTHWEST

The foregoing discussion has been of transit without separate charge, which prevails throughout the western district, except that on the lines of the Northern Pacific, Great Northern, Milwaukee west of about Mobridge, S. Dak., and Oregon-Washington Railroad & Navigation Company west of Huntington, Oreg., to Minneapolis and Duluth eastbound, and to north Pacific coast terminals westbound, a separate transit charge of from 1.5 to 2.5 cents is made. The charge here is apparently made because largely of a minimum of cross-country competition of north-and-south lines and a desire to encourage the movement of wheat rather than of flour.

We find that the making of a separate charge for transit on the northern lines named, or parts of those lines, and the granting of transit without separate charge on other lines in the western dis-

[26] The Chicago & North Western grants transit not only at intermediate points on its direct route from Minneapolis to Chicago, but over its indirect route through Cedar Rapids, Iowa, to meet the competition of the direct route of the Rock Island through Cedar Rapids. The distances are 420 miles over the direct route of the North Western, 540 over the direct route of the Rock Island, and 560 miles over the indirect route of the North Western through Cedar Rapids. The Missouri Pacific applies its direct-line rate from Wichita to New Orleans over its circuitous route through Kansas City, in order to attract the outbound movement from Kansas City to the Gulf and away from the lines operating from Kansas City to Chicago. The distances are approximately 850 miles direct and 1,075 miles through Kansas City.

[27] The record describes 30 cars of grain kept in transit in Texas for 100 days, transported 1,500 miles, and finally delivered at a point 300 miles from original shipping point, the peregrinations of these cars including a virtual shuttle service between Dallas and Fort Worth, to try those markets.

trict, or on other parts of the northern lines, subjects the shippers subject to the separate charge to undue prejudice and disadvantage and gives to the shippers against whom no separate charge is made an undue preference and advantage, from which the northern lines should cease and desist by making no separate charge for transit.

AS TO PUBLICATION OF TRANSIT RULES

Many of the present transit circulars violate the provisions of Tariff Circular 20, and are confusing, because they publish rates in connection with transit provisions.[28] They should be confined to transit rules and leave the rates to be published in rate tariffs.

BRAN, SHORTS, AND MIDDLINGS

These commodities are by-products of milled wheat. On wheat milled in transit the basis of through charge varies. In some instances it is the through rate on wheat from the origin of the wheat to the final destination of the product on both the wheat and flour and the by-products to and from the milling point. In other instances it is the through rate on corn on the weight of the by-products and the through rate on wheat [29] on the remainder. In the latter instance the justification offered is the lower value of the by-products than of the wheat, and their competition with corn as feed, or as an ingredient of prepared stock and poultry feeds.

Transit contemplates a thorough shipment at the through rate on the commodity offered for shipment and, if strictly enforced, would require through billing at that rate.[30] In that event the application of the wheat rate beyond the milling point would not be open to question. For many years there has been a departure from the practice of through billing, partly because of the frequent uncertainty as to final destination of the milled products, and partly,

[28] Milwaukee I. C. C. B–5073, item 2360, names rates from the Missouri River to Chicago and Milwaukee, and provides that the rate will be 16.5 cents higher than the proportional rate to Minneapolis when transited at Webster, S. Dak. North Western I. C. C. 9946, item 445, provides for the addition of 7.5 cents to rates to Green Bay, Wis., subject to rule 6, on shipments from west of the line from Iroquois, S. Dak., to Oakes, N. Dak., to Marinette, Wis., transited at Carroll and other Iowa points, and at Volin and Yankton, S. Dak.

[29] Or flour; sometimes the through rate on flour, when higher than on wheat, is applied.

[30] "Storage in transit and other transit arrangements rest upon the fiction that the incoming and outgoing transportation services, while distinct, are applied to a continuous shipment from point of origin to point of destination. *Central R. R. Co. of N. J.* v. *United States*, 257 U. S. 247, decided December 5, 1921. We said in *In re Milling-in-Transit Rates*, 17 I. C. C. 113: 'Why should there be a milling-in-transit point if there is not through transportation? And if there is through transportation, the through rate from point of origin must apply. 'Transit' implies a through movement.'" *Kansas City Board of Trade* v. *A., T. & S. F. Ry. Co.*, 69 I. C. C. 185, 189.

doubtless, because of the opportunity afforded (by the substituted practice of original inbound billing at the flat rate to the milling point) for selection of the lowest outbound transit balance. The application on wheat milled in transit of other than the wheat rate on the outbound shipments from the milling point results not only in a violation of the true principle underlying legitimate transit, but in discriminations and rate confusion and disorganization as well. This adjustment requires no further discussion, inasmuch as the one rate herein prescribed for wheat and coarse grains will apply on bran, shorts, and middlings from the transit point.

TRANSIT ON MIXED FEEDS

It is a common practice to apply the proportional rate or transit balance on the by-products of grain when shipped out of the market or transit point as one of the ingredients of mixed feeds containing other than the direct products of grain. In *The Transit Case*, 18 I. C. C. 280, 292, the propriety of transit regulations on such mixed feeds was questioned. In *Memphis Grain & Hay Asso.* v. *St. L.-S. F. R. R. Co.*, 24 I. C. C. 617, the transit was withheld on mixed feed containing more than 20 per cent of nontransit commodities. By-products of grain mixed with other articles into prepared feeds become part of a new commodity not contemplated under a true conception of transit on grain. The rate from the point of manufacture, whatever the level in comparison with the rate on grain, should be a flat rate, not dependent on the inbound rate on grain.

We find that, in connection with the manufacture of mixed feeds containing other than the direct products of grain, the protection of the through rates on grain or grain products, with the resulting application on the mixed feed from the manufacturing point of the transit balances or proportional rates applicable on grain or grain products is unreasonable and unlawful.

THE UNIT RULE

Under this rule, in the absence of a separate rate on mixed feeds, the rate on any transit article in the mixture, however small its proportion of the total weight, upon surrender of inbound billing for that commodity equivalent to the total weight of the transit articles in the mixture, becomes applicable on the entire weight of the transit articles in the mixture, and inbound billing on the other transit articles in the mixture may be surrendered in connection with later outbound shipments. The theory is that, over a period of time, inbound billing will have been surrendered on the respective weights

of all the transit articles in the mixture, and a retroactive effect given to the surrender requirement. But there is no requirement of subsequent outbound shipment to the destination, or over the route, of the original outbound shipment, a necessary requirement in the proper linking up of the inbound and outbound shipments contemplated by legitimate transit. Nor is it proper to make outbound shipments upon deferred surrender of inbound billing. Other objections to the unit rule need not be discussed.

We find that the unit rule is unreasonable and unduly preferential and prejudicial.

STORAGE IN TRANSIT

Storage in transit of manufactured products of grain, which leave point of origin or intermediate transit point as manufactured products, for concentration at the storage point into outbound shipments, in straight or mixed carloads, and not for further processing, transcends the legitimate function of transit. This observation extends to the practice of forwarding nontransit less-than-carload shipments at carload rates as parts of mixed-carload shipments from transit points.

We find that storage in transit of the kind described is unreasonable and unduly preferential and prejudicial.

VARYING PRESENT RATE LEVELS

Consideration will now be given to the level of rates as differentiated from the method of their construction, and in the light of the foregoing findings as to commodity relations, transit, etc. Domestic rates will first be discussed.

The average general level of the present rates on grain and grain products to and through the primary markets, and between points not made on the market combinations, differs not only in general territories, but in different localities in the same general territory, as will be seen by using, as a convenient yardstick, the scale prescribed in *Oklahoma Millers' League* v. *A. & M. R. R. Co.*, 128 I. C. C. 523, for application on wheat and flour from Oklahoma to Louisiana (Docket No. 15026):[31]

[31] This scale was made on wheat 20 per cent and on coarse grain 17.5 per cent of the southwestern first-class rates, distances to be measured by the shortest possible routes for carload traffic without transfer of lading. It was regarded, in view of the method of fixing distances, as the substantial equivalent of the scale prescribed in *Oklahoma Corporation Commission* v. *A. & S. Ry. Co.*, 101 I. C. C. 116 (Docket 12244) for application from Oklahoma to Texas.

	Percentage of 15026 scale
To Chicago from—	
Central Illinois	57
Iowa	70. 6
Wisconsin	67
Idaho	103. 5
Oklahoma	84
Panhandle of Texas	98
Montana	90
Nebraska	86. 5
Minnesota	68. 5
Kansas	83
North Dakota	75. 5
Eastern South Dakota [1]	83
Colorado	95
To Milwaukee from—	
Wisconsin	69
Eastern South Dakota [1]	83
To St. Louis from—	
Idaho	107. 5
Oklahoma	89
Panhandle of Texas	100
Western Missouri	74
Southeastern Missouri (to St. Louis and Memphis)	85
Nebraska	81
Iowa	71
Kansas	85. 5
Central Illinois	57
Colorado	99
To Cairo from—	
Central Illinois	58
Southeastern Missouri	95
To Minneapolis from—	
Idaho	110
Oklahoma	83. 5
Panhandle of Texas	100
Montana [2]	82
Iowa	74
Minnesota	63
Wisconsin	73
North Dakota [2]	[3] 66
Eastern South Dakota	75
Colorado	101
Minnesota scale up to 400 miles	63
To Duluth from—	
Montana [3]	82
Iowa	78
Minnesota	70
Wisconsin	74
North Dakota [3]	66
Eastern South Dakota	78

	Percentage of 15026 scale
To Kansas City from—	
Idaho	94
Oklahoma	88. 5
Panhandle of Texas	93
Western Missouri	73
Nebraska	78
Iowa	73. 7
Minnesota	74. 5
Kansas	68. 5
Eastern South Dakota	94
Colorado	87
To Omaha from—	
Idaho	94
Nebraska	86
Iowa	74
Minnesota	80
Eastern South Dakota	88
Colorado	87
To Sioux City from—	
Minnesota	82. 5
Eastern South Dakota	90
To Des Moines from—	
Iowa	74
To Memphis from—	
Idaho	102
Oklahoma	83
Panhandle of Texas	89. 5
Central Illinois	65. 7
Colorado	99
To Galveston from—	
Idaho	111
Oklahoma	91
Panhandle of Texas	82
Kansas	110
Colorado	115
To Dallas from—	
Idaho	116
To Oklahoma from—	
Colorado	112. 5
Idaho	108. 5
To New Orleans from—	
Idaho	108
Oklahoma	100
Panhandle of Texas	92. 5
Kansas	78
Central Illinois	81. 5
Colorado	110
To Fort Smith from—	
Idaho	100
To Little Rock from—	
Idaho	102
Iowa	101

[1] Chicago and Milwaukee. [2] Minneapolis and Duluth. [3] Plus transit.

	Percentage of 15026 scale
To Little Rock from—Contd.	
Central Illinois (average to State of Arkansas)	92
Colorado (average to Little Rock, Fort Smith, Texarkana)	89
To Shreveport from—	
Idaho	111
Iowa	114
Central Illinois (average to Louisiana Group 1)	94
To Alexandria from—	
Iowa	99
Eastern South Dakota	118
Nebraska to (Arkansas, Louisiana, Oklahoma, Texas)	115
To Seattle from—	
Idaho	100
Montana	84
Washington, northeastern Oregon, northern Idaho	75
South of Snake River in Columbia Basin [5]	75
North of Snake River in Columbia Basin [5]	80
To Oregon-Washington from—	
Colorado	98
To Portland from—	
Idaho	100
Washington, northeastern Oregon, northern Idaho	81.7
Oregon main-line points on O. W. R. & N.	81.5
Oregon branch-line points on O. W. R. & N., intrastate	94.5
Oregon branch-line points on O. W. R. & N., interstate	108
Local points on C., M., St. P. & P. in Washington	100
Local points on G. N. in Washington	85
To Arizona from—	
Idaho	109.5
Colorado	124.5
To New Mexico from—	
Colorado	149
To California from—	
Idaho	106.5
Colorado	98
To El Paso from—	
Idaho	136.5
Colorado	125

In connection with the foregoing table it will be borne in mind that, as already stated, the rates on coarse grains are the same as on wheat west of the Rocky Mountains, in Illinois, and in the territory east of the Mississippi River and the Great Lakes, and 90 per cent of the rates on wheat in the plains States east of the Rocky Mountains, including the Southwest.

It will be noted that by comparison with the 15026 scale many of the present rates are low, others are high, and relative rate levels are not in entire accord with transportation conditions. Among the influences contributing to these variations are Canadian competition, State regulation, and our own revisions in certain territories. We are confronted with the fact that, judged by the usual standards of transportation conditions, some of the rates in the western district, on both wheat and coarse grains, are too low, while others are too high. Horizontal treatment of such rates would perpetuate these inconsistencies. It follows that proper treatment would leave some of the rates as they are, reduce some, and increase others.

[5] Average to Seattle and Portland.

CARRIERS' PROPOSALS

Other than in the Northwest, in connection with *Grain and Grain Products*, 12 I. C. C. 235 (I. and S. Docket 2469), consolidated for further consideration herein, and in the Southwest, the carriers, generally speaking, especially in western trunk-line territory, point to the fact that the present rates have been largely prescribed or reviewed by us, contend that they are reasonable or subnormal, and propose no change in the present adjustment. The proposals of the northwestern carriers in the case cited are fully discussed in the report. The southwestern carriers make certain proposals. The general basis of these proposals is the scale prescribed for application from Oklahoma to Texas in the first decision in *Oklahoma Corporation Commission* v. *A. & S. Ry. Co.*, *supra*, which was substantially higher than the scale prescribed between the same points in the second decision therein. The original scale was the basis of a general voluntary downward revision of rates by the southwestern carriers, effective February 1, 1927, from Iowa, Illinois, Kansas, Missouri, Minnesota, and South Dakota to Texas and Louisiana, reflecting largely the combinations on Missouri and Mississippi River markets, from which the proportional rates to Texas and Louisiana were therein reduced. Their proposals in this proceeding include substantially increased rates from Colorado and Kansas to the Missouri River markets, offer no workable relation between the rates from the country points direct and through the Missouri River markets to the Gulf, and do not eliminate the transit balance beyond the primary markets. The southwestern carriers urge that neither the scale prescribed in the second of the above cases nor in the *Oklahoma Millers' League case*, *supra*, in view of transportation conditions obtaining in the Southwest, including extensive transit services, is high enough for application in that territory.

READJUSTMENT OF RATES MADE

A readjustment of rates throughout the western district has been evolved, for application on both wheat and coarse grains and the direct products thereof, subject to the transit regulations and other requirements of the previous discussion herein.

REASONABLE THROUGH RATE FIRST DETERMINED, THEN BROKEN BACK INTO RATE-BREAK COMPONENTS

To meet the contention, already mentioned, that through rates made on the primary-market combinations are necessarily unreason-

able, because of the manner of their construction, the rates herein prescribed have first been determined on a reasonable basis and, when applicable through primary markets from which there are proportional rates, broken back into flat rates to the primary markets and proportional rates beyond. The new proportional rates are better proportioned to the inbound flat rates than under the present adjustment, and they approximate, in a general way, the average transit balances beyond the first primary markets of the through rates prescribed in Appendix D.

We find that the present rates on wheat and coarse grains and their products are unreasonable and unduly preferential and prejudicial to the extent they exceed the rates prescribed in Appendix D, to be applied in accordance with the previous discussion herein as to rate break, relation of commodities, transit, etc., and subject to the later discussion herein of general issues or specific adjustments.

We further find that rates from other points to the same destinations are unreasonable to the extent they exceed rates made with reasonable relation to the rates from neighboring key points herein specifically prescribed.

We further find that rates between points between which rates have not been prescribed, specifically or by reasonable relation, are unreasonable to the extent they exceed rates made on the basis of the so-called interior scales shown in Appendix D.

Reasonable groupings of origin and destination points will be permitted.

FINDINGS UNDER INTERSTATE COMMERCE ACT

The Supreme Court of the United States recently interpreted the Hoch-Smith resolution as setting up no standard of reasonableness of rate level or relation other than that already provided by the interstate commerce act. *Ann Arbor Railroad Company* v. *United States*, — U. S., —, decided June 2, 1930. The findings herein are under the provisions of the interstate commerce act.

MILEAGE RATES THROUGH MARKETS A POSSIBILITY

Pronounced changes in market relations will result from the foregoing findings. The original basis of overhead through rates with transit at the primary markets proved unsatisfactory and gave rise to the proportional rates. The proportionals were quite generally observed prior to the general percentage changes and were productive of much less complaint than the present proportional rates and transit balances, which do not function together harmoniously. A

return to the method, strictly observed, of making through rates by combinations on the primary markets is warranted by this record, in the interest of market, carrier, and producer. If it should fail, a uniform mileage basis through the markets, with transit balances exclusively beyond the markets, is a possible alternative.[32]

PROTECTION OF INTERMEDIATE FLAT RATES UNDER THE RATE BREAK

In checking in the proportional rates care should be taken to protect adjustments of flat rates, and rate relations, by appropriate requirements as to the inbound flat rate that can be used in connection with the proportional. Such a provision would prevent, to the Texas gulf ports, for example, combinations on Kansas City from Kansas points close in to Kansas City on a basis too low by comparison with direct rates from other points in Kansas, and from Oklahoma. Such combinations should in no instance be less than the flat rates herein prescribed from Kansas City.

SOME GENERAL RESULTS OF THE REVISION

It is impracticable and unnecessary to set out in detail the territories of origin and destination between which the primary-market combinations of flat rates in and proportional rates out will apply. It is sufficient to say that this will be the exclusive basis of charge from the grain producing territories both west and east of the Missouri River to the East, the Southeast, the Mississippi Valley, and the Southwest, and not merely a basis alternative with the lower overhead rate and transit balance, as it is to-day. However, certain origin territories from which the routes through primary markets are sufficiently direct to warrant prescription of the market combinations as the exclusive basis of charge should be specifically described:

1. To Chicago the rates will be combinations on Minneapolis from on and north of the line of the Chicago & North Western west from Mankato, Minn., to Pierre, S. Dak. That adjustment was prescribed in *Rates on Grain and Grain Products*, 56 I. C. C. 133, 689, but has been departed from to some extent.

[32] "This proceeding is additional evidence 'that there has never been an adjustment that was satisfactory to the rival markets.' Perhaps only a uniform mileage scale would preclude claims of relative maladjustment, and while no market desires this system to be here applied or applied generally, eventual resort to this basis may possibly be the only outcome of reiterated complaint over a complex situation which we have repeatedly tried to adjust." *Minneapolis Traffic Asso. v. C., M. & St. P. Ry. Co.*, 46 I. C. C. 685, 692.

2. To Duluth the rates will be combinations on Minneapolis from on and south of the line of the Great Northern west from Minneapolis through Willmar and Yarmouth, Minn., to Forbes, N. Dak., including points on the main line of the Milwaukee west from Minneapolis through Appleton, Minn, and Aberdeen, S. Dak., to and including Montline, N. Dak. In *Rates on Grain and Grain Products, supra*, the rates to Duluth were made combinations on Minneapolis from points south of Mankato-to-Pierre line above described, except from points on the Great Northern, from which the route is through Willmar rather than through Minneapolis. Under the findings herein the rates from points on that line within the origin territory described will be the combinations on Minneapo.., whether the shipments are routed through Minneapolis or through Willmar.

3. To Chicago and St. Louis the rates will be combinations on Kansas City from on and west of the line of the Santa Fe south from Arkansas City through Oklahoma City to Fort Worth. The present rates from this territory are lower than the combinations in many instances.

4. The rates to Groups 1, 2, and 3 in Texas and Louisiana, to Arkansas, and to the Mississippi Valley, will be combinations on Kansas City from Colorado and from Kansas on and north of the line of the Santa Fe west from Kansas City through Emporia to Hutchinson, and the Rock Island thence to Liberal. From Kansas south of that line the rates will be a maximum of 3 cents less than the Kansas City combination. The present rates to these destinations are generally much less than the combinations on Kansas City from southern Kansas, and are in some instances on that combination and in others less than the combination from northern Kansas, from Nebraska and from Colorado. In *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 I. C. C., 641, transit at Kansas City under the export rates to Texas, Louisiana, Arkansas, and the Gulf ports was restricted to points of origin on and north of the line of the Santa Fe west from Kansas City through Florence, Newton, Hutchinson, Kinsley, Dodge City, and Garden City, Kans.

Kansas will be regrouped to some extent. Except for a few points in extreme northwestern and southwestern Kansas the rates to Kansas City apply from four groups extending from the northern to the southern border of the State. These groups are here rearranged into six groups also extending from the northern to the southern border of the State. The present and proposed groups and rates to Kansas City, grading up westward across the State, are as follows:

Present rate	Proposed	
	Rate	Note
	Cents	
18 cents	15	Same as present 18-cent group.
19 cents	16	Same as present 19-cent group.
19.5 cents	17	Same as present 19.5-cent group.
20 cents	18.5	Embraces present 20-cent group and the 20.5-cent group west to but not including Liberal, Garden City, Scott, Oakley, and Colby.
20.5 cents	20	Embraces additional part of present 20.5-cent group west to but not including Goodland, Wallace, Selkirk, and Syracuse.
Do	22	Embraces the remainder of the present 20.5-cent group to the Colorado Border. Cedar Bluff, Montezuma, and Sublite will be in the 19-cent group; Atwood, Santa Fe, Moses, and Hugoton in the 21-cent group; and Bird, St. Francis, Johnson, Rolla, and Elkhart in the 22-cent group.

On shipments to the East, Southwest, and Mississippi Valley rates from Colorado common points will be combinations on the Missouri River markets, and rates from Utah and Idaho will be the differentials over Colorado common points prescribed in *Ogden Grain Exchange* v. *A. & S. R. R. Co.*, 122 I. C. C. 691, Docket No. 16112.

In *Oklahoma Corporation Commission* v. *A. & S. Ry. Co.*, *supra* (Docket No. 12244) a distance scale of rates was prescribed from Oklahoma to Texas on a basis substantially lower than the rates previously in effect. The difference between the rates from Kansas and Oklahoma to Texas, then small, was considerably widened. This resulted in marked discriminations against Kansas, especially at border points, the undue character of which is generally conceded, and of which Kansas has complained. Oklahoma has also complained of an alleged undue preference of Texas in rates to Texas. The prescribed rates will place Kansas, Oklahoma, and Texas on the same general basis to Texas and the Southwest generally.

Texas and Louisiana Groups 1, 2, and 3, except on shipments intrastate in Texas, may be defined roughly as shown below. Except from Texas to Louisiana these are the groups proposed by the carriers and agreed to quite generally by the parties:

Group 1 in Texas.—East from Quanah through Dennison to Texarkana and the State line, south to Waskom, and west and north through Longview Junction, Kaufman, Alvarado, and Mineral Wells, to but not including Memphis.

Group 2 in Texas.—South of Group 1 and on the west extending south to include Girard and Big Springs, thence southeast and east through San Angelo, Temple, Hearne, Palestine, and San Augustine to the State line.

Group 3 in Texas.—South from San Angelo to and including San Antonio, thence east through Flatonia to include Galveston and Houston to the Louisiana State line.

The small Group 4, south of Group 3, proposed by the carriers, should be included in Group 3.

Louisiana Group 1.—Immediately east of Texas Group 1 from the Arkansas-Texas line east to the Mississippi River, and south of the Vicksburg, Shreveport & Pacific to include Shreveport, Monroe, and Tallulah.

Louisiana Group 2.—Immediately east of Texas Group 2 to the Mississippi River and south to include the line of the Texas & Pacific, including Natchidoches and Alexandria.

Louisiana Group 3.—The remainder of the State south of Group 2.

In both Texas and Louisiana Group 1 rates will be 5 cents, and Group 2 rates 2.5 cents, under Group 3.

Group 3, on shipments from Texas, will be the same as Group 3 on shipments from other origins. Groups 1 and 2 on shipments from Texas will comprise the same aggregate territory as Groups 1 and 2 on shipments from other origins, but Groups 1 and 2 on shipments from Texas will be divided by a line drawn from north to south just east of Paris, Corsicana, Waco, and Temple (in Group 1) instead of by the east-to-west line that will separate Groups 1 and 2 on shipments from other origins.

Generally speaking, there will be a constant transit balance between destinations in Texas, in Louisiana, and in Arkansas from all gateways and other origins. For example, the rate to Group 3 in Texas will be 5 cents over Group 1 in Texas from all origins. Such an adjustment is of value to the jobber at destination, according to this record, and should be followed by the carriers, to the extent possible, in checking in the new adjustment.

From Oklahoma rates to Little Rock will be 3 cents less than to Memphis.

Rates to Arkansas and the Mississippi Valley will be combinations on Kansas City from west of the Missouri River and combinations on Kansas City or St. Louis from east of the Missouri River.

The differential of 2.5 cents to Memphis for the Southeast under Memphis locally from Kansas City, Omaha, and St. Louis will be discontinued.

Rates to Minneapolis and Duluth will be on the same relative basis from North Dakota, South Dakota, Minnesota, and Iowa, and will correct undue preferences at border points described in *Grain and Grain Products, supra*, in which proposed rates designed to correct these discriminations were ordered canceled pending the outcome of the present proceeding.

The relation of the proportional rates from the Missouri River markets to Minneapolis and Duluth will be revised in order to accord with a similar revision of rates from these markets to the Mississippi Valley.

SPECIFIC ADJUSTMENTS

The foregoing discussion has been general. Consideration will now be given to specific adjustments presented upon the record, some of them by formal complaint, others by investigation and suspension proceedings, and still others by initial presentation in this proceeding.

FLAXSEED

Montana and other interests ask that rates on flaxseed be made uniformly 2 cents higher than rates on wheat, in lieu of 112 per cent of the wheat rates, prescribed in *South Dakota R. R. Commissioners* v. *C. & N. W. Ry. Co.*, 107 I. C. C. 35. A reversal of the above finding is not warranted.

FARM AND OTHER SEEDS

The seed interests request a revision of rates, which the record justifies. Reasonable rates would be as follows:

Kind of seed	Rate basis		
	Present	Requested	Prescribed
Broomcorn	Flax rates	Wheat	Flax.
Alfalfa	Class B	do	Do.
Lucerne	do	do	Do.
Sweet clover	Classes B and D	do	Do.
Hemp	Flax rates	do	Do.
Rape	Class A	do	Do.
Sunflower	Class B	do	Do.
Timothy	Class A	do	Do.
Millet	Flax	Flax	Do.
Grass	Class A	Wheat	Do.
Velvet beans	Corn rates	Corn	Grain.
Soya or soya beans	Wheat rates	do	Do.
Castor beans	Flax rates	do	Do.
Cane	Corn rates	do	Do.
Kaffir corn	do	do	Do.
Milo maize	do	do	Do.
Sorghum	do	do	Do.
Sudan grass	do	do	Do.
Wild mustard	do	do	Do.
Vetch	do	do	Do.

We find that the present rates are unreasonable and unduly preferential and prejudicial to the extent they exceed the prescribed rates.

AMARILLO, TEX.

Amarillo asks, on shipments to Arizona and California, to be placed in Group J with Dalhart, Tex., and a few points in Texas, Colorado, and eastern New Mexico, near Amarillo. Dalhart is 82 miles northwest of Amarillo. The transportation conditions from Dalhart and Amarillo seem to be substantially similar. There is

extensive grouping of these transcontinental rates, including practically all of Texas, all of Oklahoma and Kansas, and southern Nebraska in Groups F, G, and H, at one rate for the three groups.

We find that the failure to group Amarillo with Dalhart and other points now in Group J results in rates from Amarillo that are unreasonable and unduly prejudicial.

SOUTHWEST MISSOURI MILLERS' ASSOCIATION

The members of this association favor increased rates from southwestern Missouri and southeastern Kansas to Kansas City, in order, by a greater deduction from the basic Kansas City price, to reduce the price of wheat at the country station, and to enable them to compete with Oklahoma millers, whose country price is lower than their own, because of the higher rates into Kansas City. The request here is therefore the unusual one for increased rather than for reduced rates. It will be denied. The reduced rates prescribed herein from Oklahoma to Kansas City will result in a lesser deduction from the Kansas City price, and in same relative deduction as from southwestern Missouri and southwestern Kansas, and should remove the cause of this complaint.

TRANSIT AT KANSAS CITY, KANS.-MO.

Grain from northwestern Missouri to southwestern Missouri may be transited at Kansas City Mo., at the through intrastate rates, but is charged the higher combination of interstate rates when transited at Kansas City, Kans., in the same switching district, although, for operating reasons, grain transited at Kansas City, Mo., is frequently hauled through Kansas City, Kans. We find this difference in treatment to be unduly preferential and prejudicial in those instances in which, because of the absence of outbound proportional rates, the rate break is not to be the exclusive basis of charge.

CAIRO, ILL.

Cairo asks for rates from southeastern Missouri not higher relatively than to St. Louis, East St. Louis, and Memphis. We find that the present relation of these rates is unduly prejudicial to Cairo and unduly preferential of St. Louis, East St. Louis, and Memphis. The undue prejudice and preference will be remedied by the rates herein found reasonable.

PEORIA

To Arkansas the rates from Peoria are 6.5 cents higher than from St. Louis. Request is made for a proportional rate of 3.5 cents from Peoria to St. Louis, 157 miles.

We find that the establishment of the proportional rate requested is not warranted.

On shipments of Illinois grain to the Southeast the proportional rate from Peoria to St. Louis is 7 cents. Peoria either uses this rate or transits on the inbound intrastate rate to East St. Louis. Peoria asks that the proportional be reduced to 5 cents.

We find that this rate is unreasonable to the extent it exceeds 6 cents.

ILLINOIS SPECIFICS

To St. Louis the local rate is 11.5 cents from the so-called central Illinois group and higher or lower from other Illinois groups, according to distance. No proportional rates are published from Illinois to St. Louis. To Chicago the local rates from central Illinois are relatively higher than to St. Louis in some instances and relatively lower in others. Several of the Illinois lines publish a rate of 11.5 cents to Chicago, applicable on grain shipped out over the lakes, from substantially two-thirds of Illinois and the southwestern corner of Indiana, including East St. Louis, Ill., and Evansville, Ind. Some of the lines publish the rate as a proportional or "lake specific." Others take 11.5 cents as their division to Chicago of joint rates from Illinois to the East, constructed by adding 11.5 cents to the proportionals from Chicago.[39] This gives Chicago a rate break from most of Illinois, although short routes are not through Chicago in many instances. It also gives north-and-south lines to Chicago and connecting lines beyond long hauls on grain from Illinois to the East, in competition with the direct lines. St. Louis contends that the present adjustment unduly favors Chicago, and asks that St. Louis be permitted to go as far north as Chicago can come south at the same rate, whether its rates be called a specific or something else.[40] The same lines control the rates from central Illinois to Chicago and St. Louis, and transportation conditions are substantially similar.

We find that the present adjustment unduly prejudices St. Louis and unduly prefers Chicago, and should be corrected by making the same rates to Chicago and St. Louis for similar distances; that the rates to St. Louis and East St. Louis should be the same; and that the present plan of breaking the rates on Chicago to the East should continue. This may require proportional rates from St. Louis, properly related to the proportionals from Chicago and restricted to Illinois

[39] The lake specifics are separately published in the tariffs as the moving rates. The division equivalents are not. But both the specifics and the divisions are a matter of common knowledge to the grain trade at Chicago, as a basis of purchase.

[40] On the Illinois Central, for example, Chicago can draw grain from Illinois for distances 117 miles greater than can St. Louis at the same rate.

grain, but they can not be required here, because the rates from St. Louis to the East on domestic traffic are not here in issue. In the absence of some tariff or other complication, now unforeseen, it may be found advisable to publish the specifics as flat rates, which would necessitate the similar publication to St. Louis. The rates to Peoria should be properly related to the rates to Chicago.

DES MOINES

In comparatively recent cases [41] rates from Des Moines to Louisiana and Texas were found unduly prejudicial to Des Moines to the extent they exceeded the contemporaneous proportional rates from Omaha. In Docket No. 18900, Des Moines requests that these proportionals be continued; that additional proportional rates be prescribed from Des Moines to Kansas City and other lower Missouri River gateways; and that rates to Des Moines from States north and west of Iowa be made on a basis comparable with the rates to Minneapolis and Chicago.

The proportional rates established from Des Moines in the cases cited have resulted in many instances in combinations on Des Moines lower than the combinations on Omaha and Kansas City, also on direct routes, and in requiring Omaha and Kansas City to transit on the proportional rate from Des Moines or on through rates made on the Des Moines combination, although Omaha and Kansas City are unquestionably primary grain markets, and Des Moines can not be so regarded, though given every opportunity to achieve that status through the medium of proportional rates. The situation at Des Moines amply demonstrates that conditions at the primary markets create the proportional rates rather than that the proportional rates create the primary markets. Des Moines's status as a primary market is not substantially different from what it was at the time of *Iowa Railroad Commissioners* v. *Director General*, 63 I. C. C. 405, in which a request for proportional rates from Des Moines to the Mississippi River and Chicago was denied.[42] The chief effect of the Des

[41] Des Moines Board of Trade v. D., M. & C. I. R. R. Co., 102 I. C. C. 186; Des Moines Board of Trade v. F. D., D. N. & S. R. R. Co., 129 I. C. C. 138.

[42] "Des Moines is an important commercial city, but it is not as advantageously situated as the Missouri River cities with respect to this grain traffic. Those cities are either the termini of the principal carriers or on their main lines in direct routes. Des Moines is on the direct lines of few carriers for east-and-west traffic, and in many instances is only reached by out-of-line hauls of such traffic. The conditions which brought about the proportional rates from the Missouri River cities are in nowise comparable with those existing at Des Moines. It must be recognized that carrier competition controls at the Missouri River, and may compel the establishment and maintenance of proportional rates on a basis lower than we would be justified in prescribing from Des Moines, where similar forces are not in strife. We can not equalize markets except to correct a substantial injustice in the rates. It does not appear that Des Moines, under individual and joint rates with transit service, is laboring under such a disadvantage as a grain market, in comparison with the Missouri River cities under proportional rates, as to entitle complainants to the relief sought."

Moines proportionals seems to be to complicate the general rate adjustment rather than to help Des Moines, which could doubtless operate as well as at present under transit.

The propriety of the findings as to the proportional rates from Des Moines in the cases cited seems now to be open to grave doubt. However, the proportional rates have been effective for some time and should be disturbed only if no other course seems feasible. It would seem that Kansas City is more affected than any other primary market, and that its difficulty would be largely removed by the establishment of a proportional rate from Des Moines to Kansas City on the same basis as from Omaha to Kansas City, in lieu of the present proportional 4 cents higher from Des Moines than from Omaha. This action will accordingly be taken as a tentative solution. In no instance should the combination on Des Moines be lower than on Kansas City when the short route is through Kansas City.

It will be understood that, to points to which proportional rates are in effect from Des Moines, the proportional rates, like those from Kansas City, Omaha, and other markets, will be the exclusive basis of charge, and that overhead through rates less than the combinations of flat rates to Des Moines and proportional rates beyond will be canceled.

We find that the proportional rate from Des Moines to Kansas City is unreasonable and unduly prejudicial to the extent it exceeds 6 cents, the revised proportional from Omaha to Kansas City.

DES MOINES (DOCKET NO. 18860)

In No. 18860 Des Moines asks that proportional rates from Des Moines to points in northern Missouri on the Burlington and the Quincy, Omaha & Kansas City Railways be made on the same basis as from Omaha to the same destinations. Prior to November 12, 1925, the proportional rates to these points were the same as to St. Louis from both Omaha and Des Moines. On that date the rates to these destinations were increased about 3 cents on wheat and 2.5 cents on corn from Des Moines, but no increases were made from Omaha. Many of these destinations are directly intermediate to St. Louis from Omaha, but none of them is directly intermediate to St. Louis from Des Moines. The present rates from Des Moines are on approximately the level of the Iowa intrastate rates, lower than the Missouri intrastate rates, and among the lowest rates in the United States.

We find that these rates are not unreasonable or otherwise unlawful.

IOWA TO KANSAS CITY, CHICAGO, AND ST. LOUIS

In *Chicago Board of Trade* v. *A., T. & S. F. Ry. Co.*, 107 I. C. C. 319, a relation of rates was prescribed from Iowa to Kansas City, Chicago, and St. Louis, according to relative distances computed as therein shown, and provision was made for the addition of an arbitrary of 1 cent for joint-line hauls. This imposed a penalty on the rates to St. Louis from northwestern Iowa in most instances, because of the joint hauls to St. Louis and single-line hauls to Chicago. For rate-making purposes the many small origin groups were not disturbed, but approval was given of the carriers' proposal to compute relative average distances to the three markets from each of the small groups according to the average distance from a larger group, of which the smaller group was a part. There were three of these larger groups. One of them embraced all of the State north of the line of the Rock Island's main line from the Mississippi River west through Des Moines to Council Bluffs, comprising substantially the northern two-thirds of the State. The average distances are much greater to St. Louis than to Chicago from the eastern half of this group, and not more than 45 miles greater to St. Louis than to Chicago from the western half. The rate difference against St. Louis from this group is a half-cent without the joint-line differential and 1.5 cents with the differential. St. Louis complains that this group is too large and includes more points in the eastern half, where the distance favors Chicago, than in the western half, where the distance is less unfavorable to St. Louis, thereby inflating the rate to St. Louis by the greater average distance, a disadvantage that is enhanced by the addition of the joint-line differential. St. Louis therefore asks that the group be divided into two groups, by the line of the Minneapolis & St. Louis from Grinnell, Iowa, north to the Minnesota State line, and that the joint-line arbitrary be eliminated.

We find that the present relation of rates from Iowa to Kansas City, Chicago, and St. Louis is unreasonable and unduly prejudicial and that a reasonable relation will be that resulting from the rates prescribed herein.

IOWA AND MISSOURI TO MILWAUKEE

From Iowa north of the main line of the Rock Island from Davenport west through Des Moines to Council Bluffs the rates to Milwaukee are the same as to Chicago, but from Iowa and Missouri on and south of that line (except from the main line of the Milwaukee from

Kansas City to Chicago) the rates are combinations on Chicago, and therefore 5 cents higher than to Chicago. The relative distances and transportation conditions warrant no difference in rate to Milwaukee and Chicago from any of this territory, and to the extent of any difference we find that the relation of rates is unreasonable and unduly prejudicial.

IOWA TO DULUTH (INVESTIGATION AND SUSPENSION DOCKET NO. 3089)

Rates from points in Nebraska just west of Omaha to Duluth, made by combining flat rates to Omaha and proportional rates beyond, are lower than from directly intermediate points in Iowa to Duluth, mainly because the proportional rate from Omaha to Duluth is only 1 cent higher than from Omaha to Minneapolis, whereas the rates from the intermediate Iowa points to Duluth are made on the Minneapolis combination and are therefore 6.5 cents higher than to Minneapolis. The suspended schedules would remove these fourth-section departures by increasing the rates from the Nebraska points. The revision herein made will correct this situation.

IOWA TO NORTH PACIFIC COAST (DOCKET NO. 19620)

Complainant asks that the rate of 71.5 cents from Group E in Iowa to the north Pacific coast be reduced to 64 cents, or to 5 cents higher than the rate from Nebraska Group F to the north coast. To California terminals the rate of 66 cents from Group E is 5 cents higher than the rate from Group F.

We find that the rate from Group E in Iowa to the north Pacific coast is unreasonable and unduly prejudicial to the extent it exceeds the rate from Group F to the same points by more than 5 cents.

WICHITA

Wichita asks for proportional rates to the East and South similar to those from Kansas City, contending that its confinement to transit requires larger stocks to be carried, narrows origin and destination territories to certain railroads, and restricts outbound shipments to destinations on the line bringing the grain inbound to the market. Under proportional rates from rate-break points grain may move out as "free" grain over any line, regardless of the identity of the inbound carrier.

A similar request for proportional rates from Wichita was denied in *Wichita Board of Trade* v. *A. & S. Ry. Co.*, 29 I. C. C. 376, where the conditions which gave rise to the establishment of the proportional rates from Kansas City and other Missouri River markets are discussed, and the lack of substantially similar conditions at Wichita

and other interior markets, not located at natural rate-breaking points where inbound lines end and outbound lines begin, is shown. The pertinency of this differentiation becomes more apparent when it is stated that the proportional rates from the Missouri River and other unquestioned primary markets are mainly due to the voluntary action of the carriers in meeting competitive conditions. These same competitive conditions, had they existed, would long ago have forced proportional rates from Wichita, as they did from the natural rate-break points, without an order from any regulative authority.

The situation at Wichita is not comparable with that at the Missouri River and other primary markets from which proportional rates apply, and the request for proportional rates from Wichita will again be denied.

KANSAS TO SOUTHERN MISSOURI (INVESTIGATION AND SUSPENSION DOCKET NO. 3278)

The proposal here is to cancel the present rates on grain from Kansas to southern Missouri (on and south of the Rock Island main line from Kansas City to St. Louis), and to establish a more complete adjustment of one-factor rates, on the basis of an average of the single and joint line rates prescribed in the *Oklahoma Corporation Commission case, supra*, to be applied for average distances between basic groups of origin and destination, with fixed differentials over or under the basic groups between all other groups. The Wichita group is the basic origin group and the Springfield, Mo., group the basic destination group. The proposed rates represent both increases and reductions, the reductions predominating. They would apply through Kansas City as well as over other routes.

The proposed origin group and relations in Kansas are almost identical with those employed in making the rates from Kansas to Kansas City, except that lower rates are proposed from south of the Union Pacific's main line, in order to give recognition to shorter hauls from southern Kansas than from northern Kansas.

Most of the shippers favor the proposed rates. Millers in northern Kansas object to the disturbance of their present parity with competing millers in southern Kansas. Other objections are the failure to propose similar increased rates intrastate in Kansas and Missouri, the disturbance of destination relations, and the measure of the proposed rates compared with the respective levels of the rates to and from the terminal markets.

The present rates are on the so-called Missouri River rate basis, under which a through rate on grain between interior points in Kansas and southern Missouri may not exceed the highest rate between the Missouri River and the interior points. This results in

low and preferential rates, and has been the source of much complain from shippers and carriers. In *Grain and Related Articles*, 14 I. C. C. 391, this basis of making rates from Kansas to Oklahom was condemned. In *Rodney Milling Co.* v. *St. L. S. F. Ry. Co.*, 14 I. C. C. 569, the scale prescribed in the *Oklahoma Corporation Commission case* was held reasonable for application from Kansas t Arkansas and southern Missouri. To some parts of the destinatio territory the distances are less from northern than from southern Kansas. The general trend of this traffic is toward the East, in con nection with which no differential is made between northern an southern Kansas. Relative distances are not always closely observe in making group rates.

We find that the proposed schedules have not been justified. Thi is without prejudice to respondents filing proposed schedules o rates based on the interior scales and groups herein prescribed using average mileages from or between groups.

CENTRAL NEBRASKA GRAIN SHIPPERS' ASSOCIATION

Grain dealers at Columbus, Aurora, Kearney, and Superior com plain that the rate on coarse grains from Nebraska to California terminals applies through Omaha from a point in the group 150 mile west of Omaha, with a maximum out-of-line haul of approximately 300 miles, to the disadvantage of the interior Nebraska dealers, by reason of Iowa corn moving out on the transit balance of the Nebraska rate lower than that of the Iowa rate,[43] and by reason of a price i the country lower by the amount of the flat rate into Omaha than i would be if this transit were canceled.[44]

The transit in question has been reviewed and approved in several cases. *Routing of Transcontinental Grain and Grain Products*, 7 I. C. C. 116; *Transit Privileges on Transcontinental Grain*, 85 I. C. C 43; *Grain to Pacific Coast*, 98 I. C. C. 158; *Transit Privileges o Grain*, 113 I. C. C. 375; *Aberdeen Commercial Club* v. *C. P. R. R. Co.* 126 I. C. C. 498. In the case next to the last cited the suggestion wa made that compensation for the out-of-line service might be obtained either by assessing out-of-line charges or by a higher rate from in terior Nebraska when the routing is through the Missouri River gate

[43] To California 61 cents from Nebraska and 66 cents from Iowa. To Omaha 16 cent from Nebraska and 10 cents from Iowa. Iowa corn may be shipped at the transit balanc of 45 cents from Nebraska and pay a total of 55 cents instead of 66 cents. While Iow corn may be substituted for Nebraska corn, the transit balance, upon surrender of a 10 cent inbound expense bill from Iowa, would be 56 cents and not, as complainants seem to think, 45 cents.

[44] The contention is that with the Omaha price $1 the Nebraska country price woul be 84 cents. The Omaha dealers' coast price, $1.45 under this transit, would be $1.6 without it, and the country dealer receives only 84 cents ($1.45 minus 61 cents) instead of $1 ($1.61 minus $0.61).

ways. The carriers have apparently taken no action in respect of this suggestion. The Missouri River interests want the back-haul territory extended even farther west. Certain of the Nebraska farm organizations want the present practice continued.

Extensive back-haul arrangements are open to the interior Nebraska dealers, such as hauling shipments from Sanborn east 200 miles to Superior and back to California at the group rate applicable from both points, or from Brady Island to Kearney and directly back through Brady Island to the Pacific coast. The differentiation offered by complainants between these practices and the one complained of is not convincing. The cancellation of the transit at Omaha and continuation of the transit at the interior could not well be justified. The arrangement seems desirable at both Omaha and the interior. The out-of-line haul is substantial but not proportionately more than many others incidental to shorter hauls and not complained of. The transit in question has not been shown to be unlawful.

It will be understood that there are no proportional rates from Omaha or other Missouri River market to California, and that, if there were, the same requirement as to observance of the rate-break combinations would be required as in the case of shipments through those markets to the East, Southwest, and Mississippi Valley.

RATES FROM COLORADO AND NEBRASKA TO KANSAS AND OKLAHOMA (DOCKETS NOS. 16322 AND 16612)

From Colorado and Nebraska to Kansas and Oklahoma combination rates now apply both through the Missouri River markets and through Superior, Nebr. The rates and distances through Superior are in nearly every instance less than through the Missouri River markets, though from a large part of the origin territory the short route is not through Superior. Complainants want through rates with transit at Superior. To prescribe through routes and joint rates through that gateway would in many instances short haul both the originating and delivering carriers. The interior scale herein prescribed for this territory will provide reasonable rates between the points here in issue, and should be applied subject to the rights of the carriers in respect of short hauling.

MINNEAPOLIS TRANSIT

The through rates to Minneapolis are the same as to Duluth from Montana and from South Dakota west of Mobridge. The proportional rate from Minneapolis to Duluth is 6.5 cents. Minneapolis is directly intermediate to Duluth on the Milwaukee. On

shipments to Duluth a maximum transit charge of 2.5 cents abov the direct rate is made for milling at points west of Minneapolis but the combination on Minneapolis is charged when the billing is at Minneapolis, and the charge above the direct rate is therefor the proportional rate of 6.5 cents. On shipments to Duluth stoppe at Minneapolis for storing and cleaning the same transit charg applies as at the points west of Minneapolis. In other words, ship ments to Duluth may be stored and cleaned, but not milled, a Minneapoliis at the same transit charge as at the points west o Minneapolis. The carriers propose to correct this discriminatio against Minneapolis by canceling the transit charge for milling a points west of Minneapolis, and for storage and cleaning at Minne apolis, and make the millers both at points west of Minneapolis an at Minneapolis pay the Minneapolis combination.

From a large part of the territory described the rate on bran shorts, and middlings is the same as on coarse grains, that is, 90 pe cent of the wheat rate, to both Minneapolis and Duluth. Th through rate to Duluth on coarse grains is applied also on bran, shorts and middlings, when wheat is milled at points west of Minneapolis but the through rate to Duluth on wheat is applied when wheat i milled at Minneapolis. This gives mills at points west of Minne apolis an advantage over mills at Minneapolis of as much as 8 cent in addition to the advantage incident to the transit charge for mill ing. The carriers propose to remove this discrimination by makin the wheat rate to Duluth apply on bran, shorts, and middlings whether the milling is at points west of Minneapolis or at Minne apolis.

Our previous findings herein make the Minneapolis combinatio applicable to Duluth on shipments milled both at Minneapolis and a points west of Minneapolis. They also make one rate for both whea and coarse grains, which will also be applicable on bran, shorts, an middlings. It therefore becomes unnecessary to discuss the influenc of the requested adjustment upon the rates of the Great Northern and Northern Pacific, which have direct routes to Duluth not throug Minneapolis and indirect routes to Duluth through Minneapolis.

RAIL RATES FROM MINNEAPOLIS TO NEW YORK

Minneapolis presents this situation in respect of Montana an North Dakota wheat milled at Minneapolis and reshipped over all rail routes to New York:

The present rates on wheat from Montana and North Dakota ar the same to Minneapolis and Duluth. They were also the same prio

to 1918. Prior to 1918 the difference between the all-rail rate on flour from Minneapolis to New York and the lake-cargo rate on wheat from Duluth to Buffalo plus the all-rail rate on flour beyond was 7.23 cents. To-day that difference is 15.435 cents, due to percentage changes in the rail rates from Minneapolis to New York and from Buffalo to New York, the lake-cargo rates being approximately the same to-day as they were prior to 1918. Minneapolis contends that approximately the difference that existed prior to 1918 should be restored, if Minneapolis is to be enabled to compete with Buffalo in the milling of North Dakota and Montana wheat.

This situation, if properly before us and found to be improper, could be readjusted to accord substantially with the contention of Minneapolis either by reducing the all-rail rates from Minneapolis to New York or by increasing the ex-lake rate from Buffalo to New York. It need not be here further discussed, inasmuch as the rates from Minneapolis to New York are not directly within the scope of this investigation, and are not sufficiently related indirectly to the issues within the scope of the investigation to warrant definite action thereon.

MINNEAPOLIS TO NORTH PACIFIC COAST

On wheat to north Pacific coast points from South Dakota transit is permitted at Omaha and other Missouri River markets, but not at Minneapolis, on a shorter route. Coarse grains may be stored and milled at Omaha, but only stored at Minneapolis, a penalty being assessed for milling at Minneapolis.

We find that this granting of transit at Omaha and not at Minneapolis subjects Minneapolis to undue prejudice and disadvantage and gives to Omaha an undue preference and advantage.

FARINA FROM MINNEAPOLIS TO NORTH PACIFIC COAST

On farina (Cream of Wheat) from Minneapolis to north Pacific coast ports there is a special commodity rate of 75 cents, minimum 60,000 pounds. The rate is also 75 cents on flour. Between points in the Pacific Northwest the rate of the same carriers on farina and other cereals is higher than on flour. In *Cream of Wheat* v. *A., T. & S. F. Ry. Co.*, 91 I. C. C. 45, a rate of 95 cents, minimum 24,000 pounds, on cereals generally, including farina, was found not unreasonable.

We find that the charging of the flour rates on farina from Minneapolis to north Pacific coast points is not justified.

SOUTH DAKOTA TO NORTH COAST

To a large destination territory embracing practically all of Washington, Oregon, and Idaho, and about two-thirds of Montana, a group rate applies from Nebraska, Kansas, Minnesota, eastern South Dakota, and western Iowa, for hauls ranging from 403 to 2,800 miles. South Dakota requests either a modified distance basis or a division of both origin and destination groups into several smaller groups, grading back from the north-coast group. To California there is a less extensive grouping. There are also intermediate groups at Colorado common points and Utah common points. The proposal is strongly opposed by some of the parties of record as disrupting transcontinental groupings.

We find that the present grouping places an undue burden on short-haul traffic and is unreasonable and unduly prejudicial, and that a reasonable adjustment would provide for two intermediate destination groups.

GRAND FORKS, N. DAK.

Grand Forks is on the main line of the Great Northern, 300 miles west of Minneapolis. It contends generally for a removal of the present transit charge at Grand Forks; a rate break to Minneapolis; proportional rates to Duluth with free transit at Grand Forks; through rates to Chicago less than the Minneapolis combination, with transit at Grand Forks; through rates less than the rate-break combination to central and trunk-line territories; and various other extensions of free transit.

Our comment on the request of Wichita for the establishment of proportional rates are equally applicable here. The granting of the other requests of Grand Forks is not warranted.

COLORADO MILLING INTERESTS

Complaint is made that to north Pacific coast terminals the rates from Montana, Oregon, and Washington are too low in comparison with the contemporaneous rates from Colorado, Utah, and southern Idaho. In *Ogden Grain Exchange* v. *A. E. R. R. Co.*, 126 I. C. C. 255, relatively higher rates were approved to Portland from Colorado, Idaho, and Utah than from Montana.

The revised rates herein will correct any present inequalities in this relation.

To points in New Mexico and to Pecos and El Paso, Tex., Colorado milling interests ask for the establishment from Alamosa, Colo., of the basis applicable from Denver, and from Montrose, Colo., of rates 15 cents higher than from Denver. There is no uniform rela-

tion at present. The distance from Alamosa is about 300 miles less, and from Montrose about 100 miles more, than from Denver. The conditions are not as favorable from Alamosa and Montrose as from Denver, a circumstance counteracted to some extent, in the adjustment asked, by the differences in distance.

We find that on this traffic the rates from Alamosa are unreasonable to the extent they exceed the contemporaneous rates from Denver, and that the rates from Montrose are unreasonable to the extent they exceed the rates from Denver by more than 15 cents, the adjustment in each instance to be subject to the interior scale prescribed for this territory in Appendix D as maximum.

To most of the affected territory the new rates from Alamosa and Montrose will grade into the group rates herein prescribed from Denver to western New Mexico. The rates herein prescribed from Denver to El Paso should be scaled back at intermediate points in eastern New Mexico over reasonably direct routes.

Grain and milling interests on the Union Pacific in Kansas ask for joint rates to Arizona on the Santa Fe on the same basis as obtains from other lines in Kansas to these Santa Fe points. The Santa Fe does not oppose the establishment of these joint rates, applied through Denver, provided the Union Pacific will also participate in joint rates through Denver to California.

We find that the rates complained of from points on the Union Pacific in Kansas are unreasonable and unduly prejudicial to the extent they exceed joint rates from contiguous points on other lines in Kansas.

Arizona, California, Nevada, western Utah, and western New Mexico are blanketed at a rate of 59 cents from the western and southern portions of eastern Colorado, and at a rate of 63 cents from the eastern portion. To the north Pacific coast [illegible] eastern Colorado is grouped at a rate of 59 cents. From Idaho and Utah to this general territory the rates apply from a number of small origin groups to specific destinations. A somewhat similar adjustment obtains from northern California and from Montana. In the revision herein Colorado origin groups are made the same to California as to north-coast terminals, and specific rates are prescribed to intermediate points in Arizona and New Mexico.

SHERIDAN, WYO.

Sheridan, Wyo., complains of the relation of rates from Sheridan as compared with rates from competing mills in Montana, Colorado, and Nebraska, to destinations in Wyoming, Montana, Colorado, western South Dakota, and Nebraska. Due mainly to the lower intrastate rates in States contiguous to Wyoming, and to the absence of

joint interstate and intrastate rates from Sheridan to competitive points, the rates from Sheridan on this traffic are as much as 100 per cent higher than from competing points. The interior scale prescribed herein for this territory will remove these inequalities.

Sheridan also complains of the relation of rates from Sheridan and Denver to the East, Southwest, and the Pacific coast. To California, Arizona, New Mexico, and the Southwest generally the distance from Sheridan is approximately 600 miles farther than from Colorado common points. We are asked to prescribe a maximum differential of 12 cents over Denver to the East and Southwest. We find that rates from Sheridan are unreasonable to the extent they exceed the contemporaneous rates from Billings, Mont., by more than 5 cents to California and north Pacific coast terminals, and to the extent they exceed the contemporaneous rates from Denver by more than 15 cents to other destinations.

MONTANA

The State of Montana complains of branch-line rates relatively higher than from main-line points to both eastern and western terminals, and requests joint rates from points on the Burlington to Minneapolis via Huntley and the Northern Pacific on the same basis as from points on the Northern Pacific to Omaha via Billings and the Burlington. It also complains of alleged inequalities in rates from the Great Northern triangle territory between Havre, Shelby, and Great Falls. The revised rates from Montana will dispose of these complaints.

Montana also complains of the rates to California, Arizona and New Mexico. We find that the rates from Montana to these States are unreasonable and unduly prejudicial to the extent they exceed the contemporaneous rates from Pocatello, Idaho, by 15 cents from Havre, Shelby, Billings, Lewiston, Great Falls, and Harlowton, by 11 cents from Helena, and by 8 cents from Butte.

Montana seed interests request a tariff provision for concentrating less-than-carload lots of seeds for reforwarding in carloads at the carload rates from original point of shipment to final destination, and a provision for cleaning seeds in transit. The request first mentioned is not within the legitimate scope of transit. The other request is for a service similar to the conditioning of wheat, and tariff provision for it may properly be made.

MONTANA TO DULUTH (INVESTIGATION AND SUSPENSION DOCKET 3046)

Grain from Northern Pacific stations in Montana, competitive with Milwaukee stations, may be stopped at Minneapolis, to try that market, and be forwarded to Duluth, in the original car, at the

through rate to Duluth, but grain from directly intermediate Northern Pacific stations is denied this arrangement. The suspended schedules would remove the discrimination against the intermediate points by canceling the transit arrangement from the farther distant origins and making the future rates to Duluth by combination on Minneapolis. This issue is disposed of by the findings herein relating to the application of proportional rates and the territory from which rates to Duluth are to be combinations on Minneapolis.

OGDEN, UTAH

The Ogden Grain Exchange requests a downward revision of the rates on corn from Colorado, Nebraska, and Wyoming to Utah, Idaho, and Nevada to conform to whatever basis is established from Utah and Idaho to the Missouri River. The present westbound rates closely approximate the Pacific coast terminal rates. Grand Island, Nebr., is a typical origin and Winnemucca, Nev., and Huntington, Oreg., are typical destinations.

We find that the group rates from Grand Island to Winnemucca and Huntington are not unreasonable, but that the rates from Grand Island to points in Idaho, Utah, and Nevada east of Huntington and Winnemucca are unreasonable to the extent they exceed the rates prescribed in the interior scale for intermountain territory in Appendix D.

Ogden also requests the establishment of reasonable joint and local rates between points on the Oregon Short Line, Denver & Rio Grande Western, Union Pacific, Los Angeles & Salt Lake, Nevada Northern, and Southern Pacific. Joint rates are not now applicable between points on these lines. The lowest combinations are much higher than rates for like hauls in the same and other territories of similar transportation conditions, and local rates to intermediate points are frequently the same as the rates to terminal points for considerably longer hauls.

We find that the present rates are unreasonable to the extent they exceed the interior scale prescribed herein for this territory for both joint and single-line hauls.

RATES FROM SOUTHERN IDAHO TO SEATTLE (DOCKET NO. 20474)

Complainant alleges that the rates on grain from southern Idaho to Seattle are unreasonable to the extent they exceed the contemporaneous rates to Portland. Reparation is prayed, but that issue was deferred pending decision in this proceeding. At the time the shipments moved the rates were from 1 to 10.5 cents higher to Seattle than to Portland. The present rates to Seattle exceed those to Portland by 3 cents.

The origin points are local to the Oregon Short Line. Seattle is on the Oregon-Washington Railroad & Navigation Company lines. Both lines are parts of the Union Pacific system. The rates from southern Idaho are applicable over the Union Pacific lines only through Portland, on which route Seattle is 183 miles beyond Portland. The short line is through Pendleton and Yakima, in connection with the Northern Pacific. Over this route, which would short haul the Union Pacific, Seattle is 87 miles farther than Portland.

Complainant relies mainly on a comparison of rates for equal distances from points on other lines in Montana to Seattle. Defendants refer to rates and differences to Seattle and Portland on other commodities in the same general territory, and to grain differentials prescribed in other sections of the country.

We find that the rates charged were not unreasonable. Rates for the future are herein prescribed as a part of the general readjustment of rates throughout the western district.

BRAN, SHORTS, AND MIDDLINGS IN PACIFIC NORTHWEST

Bran, shorts, middlings, and other mill feeds are accorded flour rates within the Pacific Northwest and charged from 1.25 to 17 cents higher than the flour rates over rail-and-water routes from the Pacific Northwest, Montana, and North Dakota to California ports. The differences are higher to Los Angeles than to San Francisco and higher to San Diego than to Los Angeles.

We find that the rates complained of are unreasonable to the extent they exceed the contemporaneous rates on flour.

TRANSIT AT TACOMA, WASH.

The through rate on corn from South Dakota to the Pacific Northwest is protected on shipments transited at Minneapolis, but the combination on Tacoma is charged on shipments from South Dakota to Enumclaw, Wash., transited at Tacoma, Wash., because of an out-of-line haul of about 20 miles. The out-of-line service is much greater at Minneapolis than at Tacoma. The competitive situations at Minneapolis and Tacoma are not comparable, but the extension, herein required, of the north-coast blanket rate to Washington branch-line points from Montana and east will remove much of the disadvantage alleged by the millers in Montana and transit operators at Tacoma.

OREGON

August 29, 1924, order No. 1131 of the Oregon commission prescribed maximum intrastate distance rates and prohibited increases in lower rates to the scale basis. The joint-line scale was slightly

higher than the single-line scale. These scales resulted in reductions from branch lines of the Oregon-Washington and in the joint rates of the Oregon-Washington and Southern Pacific. From main-line points to Portland and other destinations there were few changes in rates, which were already about 13 per cent below the scale. The carriers made the rates inapplicable on shipments stopped in transit. The Federal court issued a temporary injunction against the Oregon commission's order and deferred final action until decision herein, the carriers in the meantime charging the rates and giving bond for any reparation later found to be due.

Prior to order No. 1131 the rates from a part of Oregon, including Bend, were on a common level to Portland, over both the intrastate route of the Oregon-Washington and the interstate route of the Spokane, Portland & Seattle, and on the same general level as from eastern Washington to Portland. Rates to Portland were also the same on domestic and export shipments. That order made the intrastate rates lower than the interstate rates, and lower also than the export rates. More than 90 per cent of the grain shipped to Portland is exported, and a large part of it is billed for export. The Oregon commission contends that intrastate shipments to Portland, though subsequently exported, are not export shipments, because their destination is not definitely known upon arrival at Portland. The rates prescribed in Appendix D will be reasonable for application over both interstate and intrastate routes and for export.

Prior to order No. 1131, rates to destinations south of Portland, on interstate and intrastate shipments, were combinations on Portland, and all grain therefore paid the same rate south of Portland. On interstate shipments transited at Portland that adjustment still obtains, but on intrastate shipments, due to through rates less than the combinations resulting from order No. 1131, the balances south of Portland vary on transited shipments, generally decreasing with the longer-haul traffic.[45] The best interests of carrier, shipper, consumer, and market would seem to lie in a constant balance south of Portland.

On transcontinental shipments the coast-terminal rate to Washington embraces the entire State west of the Cascades. Oregon west of

[45] The price to the producer is said to be the Portland price minus the freight and handling charges to Portland. Under a mileage scale the producer at Joseph, 376 miles from Portland, would therefore apparently receive less for his grain than the producer at Pendleton, 218 miles from Portland, because of the greater inbound deduction. To Eugene, Oreg., for example, the transit balance is 4 cents on shipments from Joseph and 11 cents on shipments from Pendleton. The soundness of the Oregon commission's argument that the Portland miller would most likely buy his grain at Joseph, at a premium price, because of the lower balance beyond Portland of the rate from Joseph, is open to serious doubt, and, if accepted, would mean a corresponding loss to the producer at Pendleton.

the Cascades pays an arbitrary over the Portland terminal rate. To Tillamook, for example, the arbitrary is $1 per ton if the grain originates east of the Missouri River and $4.30 per ton, or the full local rate beyond Portland, if it originates west of the Missouri River. Tillamook dairy interests compete with dairy interests at Astoria. Astoria pays $15 and Tillamook $129 for the service beyond Portland on a 30-ton car of mill feed shipped from west of the Missouri River and transited at Portland. The Oregon commission complains of this situation.

We find that the present difference in treatment of Washington and Oregon in the matter of terminal rate blanketing on transcontinental shipments subjects Oregon to undue prejudice and disadvantage and gives to Washington an undue preference and advantage.

THE COLUMBIA BASIN DIFFERENTIAL

Prior to *Inland Empire Shippers League* v. *Director General*, 59 I. C. C. 321, 62 I. C. C. 633, rates on grain, with some exceptions, were the same to Portland and Astoria, Oreg., and to Vancouver, Seattle, Tacoma, and other Puget Sound ports in Washington, from all points of production in a large section of the Columbia River basin, both north and south of the Snake River, extending roughly from Pendleton, Oreg., on the south to some distance beyond Spokane, Wash., on the north. Astoria is on the south side of the Columbia River, about 10 miles from the Pacific Ocean. Portland is about 100 miles inland from Astoria, on the Willamette River, about 10 miles from its confluence with the Columbia, and about the same distance from Vancouver, on the north bank of the Columbia. Seattle is 183 miles and Tacoma 143 miles north of Portland. Longview, a newer but promising city in southern Washington, is on the north bank of the Columbia River, 59.6 miles north and west of Vancouver. The average distances from all agency stations in the territory of origin mentioned are 372 miles to Seattle and 378 miles to Portland. All of the points mentioned have excellent port facilities for the handling of grain and are in keen competition with each other.

In the report mentioned it was required that from northeastern Oregon and southeastern Washington, south of the Snake River, comprising a small corner of the equalized origin territory described, the rates to Portland and Vancouver should be 10 per cent lower than to Puget Sound ports, because of shorter distances and water-level hauls along the Columbia River to Portland and Vancouver, and routes over the Cascade Mountains to Puget Sound ports. The differential was established by increasing the rates 5 per cent to Seattle and reducing the rates 5 per cent to Portland and Van-

couver. From the territory north of the Snake River, from which the distance favored Seattle, no change in the equalization of Portland, Vancouver, and Seattle was required. From the differential territory the average distances over all lines are 269 miles to Portland and 305 miles to Seattle, a distance of 36 miles. The difference is 20 miles on the Northern Pacific and 52 miles on the Oregon-Washington Railroad & Navigation lines.

In *Walla Walla County Farm Bureau* v. *N. P. Ry. Co.*, 107 I. C. C. 110, decided January 4, 1926, the producers in differential territory contended that the differential tended to reduce competition of Puget Sound buyers, and to reduce prices, but the differential was not disturbed. In this proceeding Puget Sound shippers, the Department of Public Works of Washington, and producers in the differential area in Washington ask for removal of the differential, or for a suitable differential in favor of Puget Sound ports from the territory north of the Snake River, and nearer to Puget Sound ports than to Portland, if the differential from south of the Snake River is not removed. Some of the producers in the differential area in Oregon oppose the differential, while others do not oppose it, provided the rates to Portland are not increased. Portland interests, with some exceptions, and the Oregon Public Service Commission, approve the differential, and want an extension of the origin territory from which it applies. Longview, now on the Seattle basis generally, requests rates not higher than to Portland, because its route is also along the Columbia River, and because its lesser terminal expense tends to counterbalance its additional 40 miles in comparison with Portland and Vancouver. The rates to Longview are higher than to Portland by 5 cents from Oregon-Washington Railroad & Navigation branch-line points in Oregon west of Umatilla; by 2 cents from main-line points Pendleton and west, and from south of the Snake River; and by 3 cents from points in Idaho east of Weiser.

The differential territory is served by the Oregon-Washington Railroad & Navigation Company and the Northern Pacific. The routes to Portland are over the Oregon-Washington, along the south bank of the Columbia; and over the Northern Pacific to Pasco or Kennewick, thence along the north bank of the Columbia over the Spokane, Portland & Seattle, which is jointly owned by the Great Northern and the Northern Pacific. The routes to Seattle are over the Northern Pacific through Pasco, Kennewick, and Yakima, Wash., over the Cascades; and over the Oregon-Washington through Kennewick to Yakima, thence over the Northern Pacific. The Northern Pacific has always been desirous of maintaining the equalization of Puget Sound and Columbia River ports, regardless of the difference in distance and character of haul.

We find that the differential is reasonable to Astoria and Puget Sound ports, but that the rates to Longview will be unreasonable and unduly prejudicial to the extent they exceed the contemporaneous rates to Portland by more than half a cent.

CALIFORNIA MIXED-FEED TRANSIT

Los Angeles millers of wheat can ship out their bran, shorts, and middlings, the principal by-products of wheat flour milling, under transit balances, either in the form of bran, shorts, and middlings or as constituent parts of mixed-feed shipments (which take the same through rate as wheat and flour), upon the surrender of sufficient inbound wheat billing. The transit tariffs here in issue include wheat, but not bran, shorts, and middlings, in the list of inbound commodities entitled to transit, and include also bran, shorts, and middlings in the list of outbound commodities that may be forwarded from the transit point. They also include mixed feed in the outbound list. The Los Angeles millers are also feed manufacturers, and they ship out their bran, shorts, and middlings, under the authorization of these tariffs, as a part of the feed mixtures. The mixed feed is manufactured in separate units of the flour-mill operation, located, in at least one instance, as far as 3 miles from the flour mill proper. Mixed-feed manufacturers who are not also millers, but who buy their bran, shorts, and middlings from the flour miller, are not given the benefit of the transit balance on their shipments of mixed feed, because bran, shorts, and middlings, while included in the list of outbound transit commodities, are not also included in the list of transit commodities inbound. A flour miller, however, may purchase bran, shorts, and middlings from another flour miller and get the benefit of the transit balance on his outbound mixed-feed shipments. The mixed-feed dealers who are not also flour millers allege an undue preference of the flour millers in this respect.

An additional complaint of discrimination against the Santa Fe, Southern Pacific, and Union Pacific is that, east of Ogden, Albuquerque, and El Paso, on their lines, bran, shorts, and middlings are included in both the inbound and outbound lists of transit commodities, and transfer of inbound wheat billing to independent feed manufacturers is permitted. There is competition between the eastern and the California mixed-feed manufacturers.

Clearly the California mixed-feed manufacturers are unduly prejudiced, and the millers at California and mixed-feed manufacturers in the East unduly preferred, and we so find. This discrimination will be removed by our findings in respect of transit on mixed feeds.

ROLLED WHEAT RATES EASTBOUND VERSUS WESTBOUND (DOCKET NO. 21079)

Complainant asks that on rolled wheat between California, on the one hand, and Utah, Idaho, and Wyoming, on the other, the rates be made the same in both directions, instead of 3 cents higher eastbound than westbound, as at present. A prayer for reparation was withdrawn.

We find that the charging of higher rates eastbound than westbound on this traffic is unreasonable and unduly prejudicial.

CALIFORNIA MIXED-CARLOAD RULE

Request is made of the California carriers for a mixed-carload rule providing, in respect of intrastate grain and grain products, for the application of the rate and weight on each commodity in the mixture separately, instead of the highest rated commodity in the mixture for the whole carload. The rule requested is applicable in the Pacific Northwest and would seem to be reasonable for California.

EXPORT RATES

The foregoing discussion has been of domestic rates. Export rates remain for consideration. These include rates from Kansas, Oklahoma, Texas, and eastern New Mexico to the Texas Gulf ports, and their relation to rates to New Orleans; rates from St. Louis and Missouri River gateways, and points basing thereon, and from central Illinois to New Orleans, and their relation to rates from the same origins to the Atlantic ports; rates from Buffalo to eastern ports; the relation of rates from Buffalo and Toledo to eastern ports; the relation of rates to the eastern ports; rates from western Montana to north Pacific coast ports; and rates from California to San Francisco Bay ports. These will be considered in the order named.

The distance rates prescribed from Oklahoma to Texas in the *Oklahoma Corporation Commission case* were for both export and domestic traffic. The distances from Oklahoma are generally less to Houston than to Galveston, and the rates from Oklahoma to Houston, established as both export and domestic rates, are applied to Galveston as export rates, with the result that to that port the domestic rates, made on the scale basis, are slightly higher than the export rates. Likewise from Oklahoma the domestic rates to Houston were lower than to New Orleans, and the rates to Houston were applied as export rates to New Orleans. This made the export rates to New Orleans less than the corresponding domestic rates, just as in the case of the rates to Galveston. The rates from Kansas to Galveston and New Orleans are also slightly higher on domestic than

on export shipments. The revision herein makes one rate for both export and domestic shipments from Oklahoma and Kansas to Texas ports and New Orleans, except that the export rates will be lower than the domestic rates to New Orleans in those instances in which a complete or partial equalization of export rates to New Orleans with those to Galveston is made voluntarily by the carriers in accordance with the permission granted in *Galveston Commercial Asso. v. G., H. & S. A.*, 100 I. C. C. 110, to be later discussed in more detail.

GALVESTON-NEW ORLEANS DIFFERENTIALS

The relation of the rates to Texas ports and New Orleans is of great importance to the producers of southern Kansas and of Oklahoma and Texas. In the case last cited maximum differentials of 5 cents from Texas, 4 cents from Oklahoma, and 3 cents from southern Kansas were prescribed for application to Galveston under New Orleans, for distances favoring Galveston by more than 100 miles. In the report on further hearing in that case, 128 I. C. C., 349, these differentials were modified to become 2 cents south of the line of the Rock Island westward through Oklahoma City and Amarillo; 1 cent on and north of that line to and including the line of the Rock Island westward through Hutchinson and Liberal; and nothing north of the latter line. The finding in the report on further hearing is adhered to, subject to the modification that the territory from which there is to be no differential will be on and north of the line of the Rock Island westward through Hutchinson and Liberal instead of north of that line. In eastern Texas and Oklahoma no differential was prescribed in the case cited, and none is warranted. The request of Texas for equalization of Rio Grande gateways with Galveston and Houston on export traffic is denied.

OKLAHOMA-KANSAS DISCRIMINATION REMOVED

The rates from Kansas to Texas were not in issue in the *Oklahoma Corporation Commission case*, in which rates from Oklahoma to Texas were reduced, and the relation of rates from Kansas and Oklahoma to Texas ports has been, since that decision, the subject of complaint from Kansas of a discrimination generally conceded to be unjust. Following the submission of the present proceeding the carriers voluntarily reduced their export rates from Kansas City and Oklahoma to the Gulf 7 cents.[46] Later the carriers from Kansas

[46] The reduced export rate of 23.5 cents represents the transit balance beyond Kansas City of the former rate from Colorado common points to the Gulf, also of the former proportional rate of 31.5 cents from Omaha to the Gulf, and is about 2 cents lower than the transit balance of rates from that part of Kansas from which, in *Southern Kansas Grain Asso. v. C., R. I. & P. Ry. Co., supra*, direct rates less than the Kansas City combination were permitted to apply through Kansas City with transit, and from

Colorado, and southern Nebraska reduced their rates over direct routes to the Gulf in a like amount, in order to preserve the relation between the direct rates and the combinations on Kansas City. The reduction was substantially to the same relative level as then applied from Oklahoma, and had the effect of removing the discrimination in favor of Oklahoma, of which Kansas complained. The revised rates herein are on the same general basis from Kansas, Oklahoma, and Texas to the Texas ports and New Orleans, and are the same as on domestic shipments, as already explained. They will also dispose of the complaint of Oklahoma of an alleged undue preference of Texas on export shipments to Texas ports.

EXPORT RELATION OF MONTREAL, NEW ORLEANS, AND BALTIMORE

For years the export rate from St. Louis to New Orleans has been made differentially less than from St. Louis to Balitimore. The differential was 4 cents prior to the world war, became as high as 13 cents during and following the war, and during the pendency of this proceeding was 7 cents.[47] Chicago requested its restoration to 4 cents. New Orleans, because of alleged disadvantages in rail rates to New Orleans and ocean freights beyond, in comparison with the rail-and-ocean rates through Baltimore, requested its increase. Since the argument in this proceeding the differential has been increased to 14 cents.[48] As the rate from Omaha is the combination on St. Louis to both Baltimore and New Orleans, and the rate from Kansas City is the same as from Omaha to Baltimore, and 1 cent less than from Omaha to New Orleans, the differential from Omaha is 14 cents and from Kansas City 15 cents.

Another important relation is between the rates from Omaha and Kansas City to Montreal and the Gulf. The present through charge to Montreal is approximately 31.5 cents, representing the combination of the proportional rate of 17.5 cents to Chicago and lake charges (including elevation and handling charges) of approximately 14

which territory came most of the Kansas shipments to the Gulf. This reduced export rate was first published by the Kansas City Southern over its direct route from Kansas City to Port Arthur, Tex., and was later participated in, or published over direct lines, by other carriers from Kansas City to New Orleans, Galveston, and other Texas ports. The relation of 1 cent over Kansas City is maintained from Omaha under present rates of 23.5 cents from Kansas City and 24.5 cents from Omaha.

[47] 18 cents to New Orleans and 25 cents to Baltimore. Chicago would restore the differential of 4 cents by rates of 15 cents to New Orleans and 19 cents to Baltimore, and would preserve the equalization of routes through Chicago and St. Louis from the Missouri River to Baltimore, by a reduction of 6 cents through Chicago to correspond to the 6-cent reduction through St. Louis, by reducing the rate from the Missouri River to Chicago 3 cents, and the rate from Chicago to Baltimore 3 cents. The request for the reduction of 3 cents from the Missouri River to Chicago has already been referred to in connection with the discussion of the proportional rate from Omaha to St. Louis.

[48] St. Louis to New Orleans 11 cents; St. Louis to Baltimore 25 cents. The former rate was voluntarily published by the Missouri Pacific and is the result of breaking the recently established rate of 24.5 cents from Omaha to New Orleans on St. Louis (13.5 cents to St. Louis and 11 cents beyond).

cents beyond. The present rates to Galveston and New Orleans are 24.5 cents from Omaha and 23.5 cents from Kansas City. The present through charge to Montreal is therefore higher than to Galveston and New Orleans by 7 cents from Omaha and 8 cents from Kansas City. Chicago and the lines from the Missouri River to Chicago complain that these differentials are too high to permit of competition of the Montreal route with the Gulf routes, and that they should not exceed 4 or 5 cents. Under the revision herein this relation will not be changed from Kansas City, due to a reduction of 2.5 cents both to Chicago (which is reflected in the through charge to Montreal) and to Galveston and New Orleans; but the differential from Omaha will be reduced to 2 cents, because of the change in the basis of rate from Omaha to the Gulf from 1 cent to 6 cents over Kansas City, that is, to the basis of the combination on Kansas City,[49] which is also the basis herein prescribed for domestic shipments.

The rate from Omaha and Kansas City to Baltimore is 38.5 cents, representing the combinations of 17.5 cents to Chicago and 21 cents beyond, and 13.5 cents to St. Louis and 25 cents beyond. The through charge of 31.5 cents to Montreal is therefore 7 cents less than to Baltimore. The revised through charge to Montreal, by reason of the reduction from 17.5 cents to 15 cents to Chicago, will be 29 cents. Reasonable export rates to Baltimore will be 31 cents from Omaha and Kansas City, 16 cents from Chicago, and 22 cents from St. Louis. The revised proportional rates to St. Louis are 9 cents from Kansas City and 13 cents from Omaha. The revised rate of 31 cents from Omaha and Kansas City to Baltimore will therefore break on Chicago from both Omaha and Kansas City, and on St. Louis from Kansas City. A reasonable rate from St. Louis to New Orleans will be 14 cents. The difference from St. Louis to New Orleans under Baltimore will therefore be reduced from 14 cents to 8 cents.

Another important export adjustment is from central Illinois. The rates from central Illinois are 11.5 cents to Chicago and St. Louis and 32.5 cents to Baltimore.[50] The rate from St. Louis to New Orleans is 11 cents. The through rate of 22.5 cents to New Orleans is therefore 10 cents less than to Baltimore. Chicago asks for a maximum difference of 3 cents. The revised rates will be the St. Louis combinations of 27.5 cents to Baltimore and 25.5 cents to New Orleans and will narrow the differential to New Orleans under Baltimore from 10 cents to 2 cents.

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[49] Omaha and Kansas City to Chicago from 17.5 to 15 cents; Omaha to New Orleans from 24.5 to 27 cents; Kansas City to New Orleans 23.5 to 21 cents.

[50] The Chicago combination applied with transit at East St. Louis.

We find that present export rates are unreasonable to the extent they exceed the following:

	Present	Prescribed
Omaha to Montreal	31.5	See note.
Kansas City to Montreal	31.5	See note.
Omaha to Baltimore	38.5	31
Kansas City to Baltimore	38.5	31
Omaha to New Orleans	24.5	27
Kansas City to New Orleans	23.5	24
St. Louis to Baltimore	25	22
St. Louis to New Orleans	11	14
Chicago to Baltimore	21	16
Central Illinois to Baltimore	32.5	27.5
Central Illinois to New Orleans	22.5	25.5

NOTE.—The reduction from 17.5 cents to 15 cents herein made in the proportional rate from Kansas City and Omaha to Chicago will result in a reduction from 31.5 cents to 29 cents in the through charge from Kansas City and Omaha to Montreal.

EX-LAKE RATE FROM BUFFALO

A proposal of Chicago, Buffalo, Philadelphia, and Boston is a reduction of 3 cents in the export rate on ex-lake grain from Buffalo to eastern ports. The net rates from Buffalo (exclusive of elevation and storage) are 13.5 cents to Boston and New York and 13 cents to Philadelphia and Baltimore.

In 1926 80 per cent of the ex-lake grain from Buffalo to New York was Canadian grain shipped through Buffalo in bond. The carriers contend that we have no jurisdiction over shipments in bond; that a reduction in the ex-lake rate from Buffalo to New York would inure to the benefit of this grain and would be met by the Canadian rail-and-water routes and the New York State Barge Canal; and that the net result would be an advantage to the Canadian producer and a disadvantage to the American producer and the American rail lines.

We shall make no order in respect of these rates, but the carriers will be left free to establish any lower rates necessary in their discretion to enable these routes to compete with other export outlets.

BUFFALO-TOLEDO

Buffalo seeks a differential of 3 cents under Toledo and other western Lake Erie ports to Philadelphia and Baltimore, in lieu of the present equalization of all of these ports, in view of a lesser distance from Buffalo than from the other Lake Erie ports. The relative distances are not such as to warrant the granting of this request.

ATLANTIC PORT DIFFERENTIALS

Other issues affecting deliveries to ship side and port differentials at north Atlantic ports were recently passed upon in *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I. C. C. 691.

EXPORT RATES FROM MONTANA TO NORTH PACIFIC COAST

In 1922 the Great Northern, Northern Pacific, and Chicago, Milwaukee, St. Paul & Pacific (Milwaukee) established export rates 7 cents less than the domestic rates to Puget Sound and Columbia River ports from the western half of Montana, more specifically, from west of and including Burgoyne on the Milwaukee, Billings on the Northern Pacific, and Havre on the Great Northern, an important wheat-producing section on each of these lines. The Milwaukee had previously published export rates, which were canceled by the Director General of Railroads in 1918. The reasons for their establishment were said to be to afford a wider market to the Montana farmer, to furnish loading for westbound empty cars, and to furnish tonnage for export vessels of the United States Shipping Board operating out of these ports. These carriers now propose to cancel these rates, contending that conditions have changed since 1922, in that the farmer's condition has improved, there is no longer a car shortage on the Pacific coast, and the United States Shipping Board has disposed of its ships to private interests; also that a continuation of these export rates has become a menace to their entire northwestern adjustment, as evidenced by requests for similar rates from eastern Montana, from Idaho and North Dakota, and for the same level of rates eastbound to Minneapolis and Duluth.

In *Export Rates on Wheat and its Products*, 107 I. C. C. 276, tariffs proposing to cancel these export rates were found not justified in connection with a hearing in which the Great Northern and the Milwaukee declined to make any recommendation either for or against their retention, in view of conflicting claims of millers in Montana and Minnesota and of grain dealers at Minneapolis and Duluth, on the one hand, and millers and grain dealers at Puget Sound and Columbia River ports, on the other. The Northern Pacific asked for cancellation of the rates after their maintenance for three years, on the grounds that they had not helped the Montana farmer; that they had caused revenue losses not recouped by economy of operation from increased traffic; that the condition of the Montana farmer had so greatly improved as not to need the aid of the export rates; and that the Montana wheat is of a premium variety that would move as freely on domestic as on export rates. The three carriers

now propose the cancellation of these rates for these same general reasons.

Throughout all these hearings the cancellation of the export basis has been vigorously urged by milling interests in Montana and Minnesota, including interior mills, and by grain interests at Minneapolis and Duluth. Their general contentions have been that the Montana wheat is of too high a grade for manufacture into flour for export to the Orient; that Washington and Oregon wheat is substituted for the Montana wheat by the coast millers for shipment to the Orient, and the Montana wheat flour is sold in this country, to the disadvantage of their eastern competitors, in the amount of the export differential; and that the export rates increased from 8 to 15 cents the advantage in the delivering at Liverpool of Montana wheat milled at Seattle, over the same wheat milled at Minneapolis and shipped out through Duluth and the Atlantic ports. The Minnesota millers and grain dealers request that the export basis, if retained to Puget Sound and Columbia River ports, be established also eastbound, to permit of their competition with west-coast and Canadian mills and dealers in the export markets. In this proceeding request is made for an extension of this export basis from Sheridan, Wyo., on the Burlington, 142 miles east of Billings, and from southern Idaho, if the present basis is to be continued from the western half of Montana.

The west-coast millers vigorously deny the charge of substitution and urge in justification of the export rates that they have brought better wheat prices to the Montana farmer; that they are necessary to successful competition with Canadian mills, which grind wheat of the same high grade as the Montana wheat; that the eastern mills have the benefit of low export rates for that part of the haul from Buffalo and Chicago to the Atlantic seaboard; that the carriers have a large empty box-car movement from Montana to the west coast, which can be well utilized for the transportation of export grain; and that the conditions which gave rise to the export rates have not substantially changed, except that the Canadian competition through Vancouver for export has increased.

An important reason for the refusal to permit the cancellation of these rates, in the investigation and suspension proceeding mentioned, and the charging of the domestic rates which were there found not unreasonable, was the failure of the carriers to show substantial similarity of transportation conditions affecting the export and domestic movements. This record shows identical incidents of transportation of the two classes of shipments, as to equipment, routing, train movement, destination, terminal service, etc. The carrier does not know which is which. Any difference in service seems, in fact,

to favor the domestic traffic, which requires less clerical and policing service than the export shipments.

The comprehensive testimony on the subject, while conflicting, does not on the whole, establish that the Montana farmer gets any material benefit from these export rates.

For like distances the Montana export rates are from 10 to 35 per cent lower than the domestic rates from Idaho, Wyoming, Colorado, Kansas, Oklahoma, Texas, Nebraska, and South Dakota to Chicago, and are lower than the export rates to Galveston by approximately 35 per cent from Kansas, Nebraska, and Colorado, and by 20 per cent from Oklahoma.[31]

The rates herein prescribed are for application on both domestic and export shipments and will dispose of the issue now under discussion.

BARLEY FOR EXPORT THROUGH SAN FRANCISCO BAY PORTS

On San Francisco Bay, Port Costa is opposite South Vallejo and Oakland is opposite San Francisco. All four ports compete in the purchase and exportation of barley from the Sacramento Valley on the north and the San Joaquin Valley on the south. From both origin territories the rates to San Francisco and Oakland are the same, which is also usually true of Port Costa and South Vallejo. The rates to San Francisco and Oakland are from 0.5 cent to 1.5 cents higher than to Port Costa and South Vallejo for distances under 300 miles, and the same as to other ports for greater distances. From points on the Southern Pacific's coast division the rates to Oakland and San Francisco are lower than to Port Costa and South Vallejo. Exporters at San Francisco and Oakland ask that the differentials against them be removed in order to remove the present difficulty in their competing with the exporters at Port Costa and South Vallejo. They are willing in that event that all four ports be equalized from the Southern Pacific's coast division, which, however, is said to be a territory of light production. The exporters at Port Costa and South Vallejo say that San Francisco and Oakland exporters have a considerable advantage over them in the use of State-owned facilities.

The rates complained of were made to meet the competition of boat lines operating on the San Joaquin and Sacramento Rivers, which published higher rates to San Francisco and Oakland than to

[31] As of the period of this proceeding. They are approximately 15 per cent lower than present export rates to Galveston from Texas, Oklahoma, Kansas, Nebraska, and Colorado, under the recent reduction, already referred to, from Kansas, Nebraska, and Colorado to the basis then in effect from Oklahoma. These southwestern export rates are on approximately the same basis as the domestic rates from Montana to the north-coast ports.

Port Costa and South Vallejo. The San Joaquin River is no longer navigable beyond Tracy. The boat lines want no disturbance of the present relation by reductions to San Francisco and Oakland, because of the effect it would have on their revenues. They say that their service to San Francisco and Oakland costs more than to the other ports, and that a reduction to San Francisco and Oakland would make the rates so low as to make questionable their staying in the business. Port Costa and South Vallejo are served only by the Southern Pacific. San Francisco and Oakland are served by the Southern Pacific and other lines.

From the Sacramento Valley distances are to Oakland 26.9 miles greater than to Port Costa, and 24.4 miles greater than to South Vallejo. These are short-line mileages. Over routes actually used for operating reasons the differences are in some instances greater. From the San Joaquin Valley south of Tracy, Lathrop, and Stockton, via Peters, distances are to Oakland 14.1 miles greater than to Port Costa, and 24.2 miles less than to South Vallejo; to San Francisco generally greater than to Oakland; to Port Costa about 37 miles less than to South Vallejo; and to South Vallejo greater in all instances than to San Francisco and Oakland. Nevertheless South Vallejo is grouped with Port Costa, directly opposite, for competitive reasons, just as San Francisco and Oakland, opposite each other across the bay, are grouped for competitive reasons, but at rates higher than to Port Costa and South Vallejo.

The present adjustment to these four ports has existed for many years. On intrastate traffic it was prescribed by the California commission, largely because of boat-line competition. The carriers here do not desire to make the equalization, and thereby differ from the carriers to New Orleans and Seattle, which desire to equalize the rates to those ports with the rates to Galveston and Portland, for shorter mileages. The rates in Appendix D will be reasonable for this traffic.

FOURTH-SECTION RELIEF

No fourth-section applications were set for hearing with this investigation, nor did the carriers request additional relief in that respect. Some of our findings herein will, however, require additional fourth-section relief, and to take care of such situations the following, approved in our report in *Consolidated Southwestern Cases*, 123 I. C. C. 203, page 403, is reaffirmed:

> Our findings herein will be understood to require establishment of the prescribed rates over the direct routes. The defendants may file applications for such relief from the long-and-short-haul provision of the fourth section as they may require in connection with the rates prescribed. In instances in which such applications are filed within 90 days after the date of service of this report consideration will be given to the entry of orders granting temporary

relief to aid establishment of the rates herein prescribed or approved and appl
ing on the traffic embraced in such applications, and to maintain such rat
until final action upon said applications.

AS TO OUTSTANDING ORDERS

Outstanding orders inconsistent with the findings and order here
will be modified accordingly.

REPARATION

Some of the complaints consolidated for hearing on this reco
ask for reparation. Other complaints were filed during the pendenc
of this proceeding and submitted, without separate hearing, f
determination on this record, but with a reservation of the issue
reparation. The revision herein made is mainly of the relations
rates, in the removal of undue preferences and the promotion of un
formity of rate levels under substantially similar transportation co
ditions. The rates covered by these complaints have not been show
to have been inherently unreasonable, in the past, under section
of the interstate commerce act.

INTERSTATE VERSUS INTRASTATE LEVELS

An important issue is the relation between interstate and intr
state rates. The complaints of discrimination against interstat
shippers have been numerous. The desirability of uniformity in ra
levels in the same general territory, for both interstate and intrastat
shipments, is apparent. Instead of any reasonable approach to th
uniformity there is a wide disparity between not only interstate an
intrastate levels, but between intrastate levels themselves, as th
following table of rates for representative mileage blocks will show

	100	200	300	400
Arkansas	14.5	20.5	25.5	2
Oklahoma	14.5	20	24	2
Texas	15	20	25	3
Kansas	13.5	19	20	2
Missouri	13.5	19.5	22.5	2
Iowa	12	16	20	2
Illinois	13	16.5	19.5	
Wisconsin	18	26	29.5	3
Minnesota	12	14	16	1
Nebraska	16.5	22.5	25.5	2
South Dakota	[1] 13.5	19	24	2
Do	[2] 15.5	22	27.5	3
North Dakota	13	18	23	2
Montana	16.5	23.5	27.5	3
Wyoming	15	20	25	2
Idaho	19.5	34	36	3
Oregon	15.5	20.5	25.5	3
Washington, coast	13	18.5	24	2
Washington, interior	16.5	27.5		
1926 scale	16	22	27	3

[1] East of Missouri River. [2] West of Missouri River. [3] For 350 miles.

It will be assumed that not only generally in the interest of substantial equality among all shippers, but in accordance with the cooperative agreement every effort will be made by the State commissions to achieve the maximum of uniformity in interstate and intrastate levels. Upon this assumption an opinion has been expressed herein upon certain of the intrastate adjustments in Oregon, California, Texas, and perhaps other States.

GENERAL COMMENT

From what has preceded, it must be obvious that this is an unusual proceeding. It embraces threescore and more of major issues, affecting every part of a vast territorial domain, each of which would ordinarily present a case of more than average importance and be treated in a separate report in the customary way. Detailed individual treatment of separate issues in this proceeding would result in a report encyclopedic in size, far beyond the limits of practicability, and require many months of additional time. As a practical matter it has therefore been impossible to discuss all of the facts bearing upon each issue. However, huge as this record is, thorough examination has been made not only of the immediate transcript of some 53,000 pages, but also of the 2,100 exhibits and approximately 20,000 pages of briefs, exceptions, oral argument, and final memorandums.

As previously stated, the greater part of the evidence and the chief contentions centered around wheat. In some respects, in a traffic sense, wheat is the most liquid commodity known in transportation. The classes or grades of wheat have long been standardized and, commercially, wheat approximates currency. The rate structure should permit it to move freely in all directions. Rates on wheat are closely related to one another, and even a slight change in one will ordinarily affect the movement governed by the others. In fact, generally speaking, all the rates on wheat may be likened to a huge blanket covering the entire country, and a pull on any part of this blanket to the extent of 1 or 2 cents, sometimes even a fraction of a cent, will be felt in every other part.

The action here taken represents the fullest possible response to all the mandates of the law affecting, among other things, the important subjects of levels and relations of rates, the natural and proper development of the country as a whole, and the maintenance of an adequate system of transportation. The future volume of movement of wheat and other grains between specific points can not be accurately known. It follows that the revenue effects of the increases and decreases which will follow the effectiveness of our

action herein can not be precisely stated. We have made many different checks and estimates. While the reductions far exceed the increases, and the corresponding revenue effects will be substantial, the full effect upon revenues can not be adequately foretold, in view of the limitations upon transit, the elimination of transit balances outbound from primary markets, and the greater safeguarding of revenues from wasteful competition that should follow the reduced level of rates. We are satisfied that the readjustment will not threaten the maintenance of an adequate system of transportation. We say this especially in the light of increased revenues already granted in certain other cases, and in the realization that a failure of the present revision to afford adequate revenues will prompt further proceedings.

It would be impossible to take any comprehensive action without adversely affecting certain of the conflicting interests upon this record. Nothing but experience can demonstrate what the effect will be regarding certain of these issues. We therefore invoke the aid of carriers in establishing the rates herein prescribed with the greatest possible expedition in order that this new rate structure may receive a speedy test. All parties should cooperate to make careful note of the effect upon their interests, with the view to bringing to our attention from time to time, after a reasonable trial, those situations which may require further consideration.

An appropriate order will be entered.

McMANAMY, *Chairman*, concurring:

In general, I concur with the conclusions here reached because I believe they will bring about a substantial improvement in the existing grain-rate structure in the western district. The rates here established will afford a measure of relief to some of the products of agriculture and are not unjust to the railroads because the record in this case conclusively shows that wheat has been bearing more than its share of the transportation burden. I disagree with the conclusions in certain particulars, the most important of which, briefly stated, are as follows:

Coarse grains.—For many years what are known as coarse grains—that is, corn, oats, rye and barley—have moved on a percentage of the wheat rates. The chief justification for this has been the lower value of such grains. It is here proposed to require coarse grains to move at the wheat rate. This results in actual and substantial increases over the present rates from many important producing points. I find it difficult to justify this change. I think the differential under wheat for the transportation of coarse grains should be continued.

Transit.—The report allows but two so-called free transits plus one inspection stop, which substantially improves existing conditions in the Middle and Southwestern States, where the number of free-transit stops has been unlimited. It is a backward step in the Northwestern States, where transit services have been separately charged for, because it increases the rate by including therein the cost of a service which the grower does not ordinarily want or use, yet under the rules here established is required to pay for.

There can be no such thing as free transit. It is a service which at 2 cents per 100 pounds costs on the average approximately $20 per car to perform and which must be paid for by some one. To the person for whom it is performed it is a valuable service for which the carrier is entitled to compensation. It includes ordinarily two complete terminal services at each transit point. That is, it involves, first, placing the loaded car at an elevator, mill, or warehouse for unloading; second, switching out the empty car; third, placing another empty car for loading when the shipment is again ready to go forward; and fourth, switching out the load and putting it in the train. Exact cost to the railroads of transit service on grain is not available but the total is estimated to be approximately $30,000,000 per annum in the territory covered by this report. My own view, for which I find support in the record, is that a very small percentage of this is performed for or desired by the actual producer of grain. It is no doubt a very essential part of the process of marketing and milling the grain, and the reshipment of grain products, but those who desire and use it should pay for it. Under no circumstances should the cost of transit be included in the grain rates where it must be borne pro rata by all shippers regardless of whether or not they desire it or use it. With a reasonable charge for this so-called free service it would be possible to give the actual grower of grain lower rates without depleting the carriers' revenues and that I understand to be the primary object sought in this proceeding.

Markets.—I disagree with the theory that certain markets, here designated as primary markets, are entitled to a more favorable adjustment of freight rates than other markets not so designated. The principal distinguishing feature of the so-called primary markets, so far as I can determine, is the fact that they are what are known as "futures markets," that is, markets which make a business of buying and selling futures grain for a rise or fall in price. To my mind that distinction does not entitle such markets to a more favorable adjustment of freight rates than is given ordinary markets which simply buy and sell grain for a merchandising and storage profit but

do not traffic in futures, and I know of no provision of the act which gives us the authority to make such a distinction.

Export rates.—The real problem of the wheat grower is the disposal of the surplus that is grown which can not be consumed in this country. This surplus approximates 200,000,000 bushels per annum. If it is to be disposed of in foreign markets it must meet the competition of grain grown in other countries which may be and often is both grown and transported at a lower cost. The freight rates on grain for export becomes, therefore, an important factor in connection with its sale. Rates to the ports on commodities for export lower than domestic rates on the same commodities are an established part of our rate structure. Iron and steel articles, automobiles, coal, farm machinery, and many other commodities enjoy such rates and we have repeatedly justified them on the ground that transportation services to the ports are different and less expensive on commodities for export than on similar commodities for local consumption. To the extent that transportation conditions warrant, export rates lower than domestic rates on grain and grain products should be provided to aid in the disposal of the surplus which is depressing our home markets.

MEYER, *Commissioner*, concurring:

It seems to be generally understood that the large task directed by the resolution is the reconstruction of the rate structure of the country. I do not understand that this direction has been affected by the recent decision of the Supreme Court of the United States in the California Fruit Case, — U. S. —, decided June 2, 1930. We are also directed to remove discriminations against the various classes of traffic, commodities, localities, and parts of the country. This report is our answer to those directions with respect to grain and grain products.

The record in this case for the first time presents a complete view of the existing grain rates in western territory and places before us facts upon which a revision may be attempted. As the commissioner in immediate charge of this proceeding, I wish to thank the many contributors to this record. Without their cooperation our task would have been impossible.

The report sets up a revised grain-rate structure which I believe experience will demonstrate to be an improvement over that which now exists. The new structure is not a glorified distance scale nor a symmetrical geometrical figure. It is a system of functionally related rates which fit the grain business as described in this record.

The rates prescribed lie within the zone of reasonableness, but they are the lowest rates on this traffic which can be lawfully prescribed.

The failure of the report to authorize or permit the equalization of ports in connection with export traffic is, in my judgment, not sound. I shall not discuss port equalization on domestic traffic. To my mind the weight of the evidence is strongly in favor of permissible port equalization. This was quite generally admitted even on the part of witnesses who spoke for the nearer ports. Apprehension was expressed by some of them that equalization might result in a higher rate than would otherwise be imposed on the nearer port. With the assurance that the rate to the nearest port would be made as low as possible, based on transportation conditions to that port, there was almost no testimony on the part of witnesses who testified on that subject in opposition to voluntary equalization. The general consensus of opinion was to the effect that carriers should be left free to equalize the respective ports to the extent that they may find necessary in the conduct of their business. Here I am speaking almost exclusively of wheat because wheat is the only grain that presents a large export problem, which other grains do not present. Carriers should be given the greatest possible liberty to deal with export situations as they arise. Equalization is one of the important factors in such situations. This applies to lake as well as to Gulf and ocean ports.

The suggestion is made that coarse grains should continue to take rates that are 90 per cent of the wheat rates as revised herein. One pertinent reply is that such a basis of rates would fall below the zone of reasonableness and would take from the carriers many additional millions of dollars which can not fairly and lawfully be taken. A reduction of the coarse-grain rates to the same extent that wheat rates are reduced herein would be disastrous to some important carriers. Certain of the heavy, coarse grain territories have enjoyed unduly low rates while other areas of equal importance have borne rates that are too high. This is demonstrated by the large reductions which result from our action herein in the coarse-grain rates of South Dakota, Nebraska, and Kansas. To bring both to the common level of the reduced rates on wheat by increasing one and lowering the other is an act of justice under the law and not a proper foundation for an imputation of vacillation on the part of the commission. To continue the 90 per cent basis for coarse grains would require a correspondingly higher basis for rates on wheat for which there is no justification, not to mention the admitted discriminations which such a conclusion would continue.

I am quite content to let Des Moines continue to experiment with proportional rates as provided in the report. They do not appear to have done that market any particular good nor do they seem to have done other localities substantial harm, although, when established as

in this instance, they are troublesome as part of a properly balanced rate structure. Further experience should be valuable in throwing light on the relation of the rate structure to the location and development of markets. Basic economic forces determine the location of price-registering primary markets. *Helena Traffic Bureau* v. *M. P. R. R. Co.*, 89 I. C. C. 405, at pages 415 and 416. These locations are facts to be considered like the location of the grain fields themselves, not the result of caprice or of the form of a rate structure, as some contend. The denial of this fundamental fact has been a strange feature of this proceeding which asserted itself periodically with cynical persistence from beginning to end. The grain fields and the price-registering markets are among the fundamental facts to be considered in the creation of a grain-rate structure, coordinate with the location of milling centers, areas of consumption, and ports of export. The record in this case is conclusive on that subject.

As was so clearly said in the *Helena case*, points on the banks of rivers or lakes in this country which are now accorded a rate-breaking arrangement have it because they play an important part in some industry as a whole, or because the force of competition has gradually brought about such an adjustment and that as grain is now marketed in this country the existence of primary markets at such important gateways as Omaha, Kansas City, St. Louis, and Chicago, with great storage facilities, is almost an economic necessity, and rates are properly made to meet these existing conditions. The rate break herein prescribed will not, as some seem to think, unduly favor primary markets, since the outbound proportionals represent averages of the transit balances of through rates prescribed via interior transit points. In fact, if any advantage accrues under this system, it will be at interior transit points which will still be free to select the most favorable transit balances, whereas the markets will be compelled to operate exclusively on their proportionals, where such exist.

The amount of grain which receives transit services can not be definitely stated for the reason that the facts necessary for an accurate statement are not available. The record seems to warrant the assumption that about one-half of the grain transported receives one or more transit services, even under existing regulations and practices.

As a result of this proceeding the number of transit services under the rate on any shipment of grain is limited to a maximum of two. This is very different from the assumption, mistakenly indulged in, that the rates herein prescribed provide for two transits on all shipments. In fact, they provide for a maximum of two transits on such grain as may be transited, knowing that one-half or less than one-

half of the grain transported receives transit. I find no warrant in the record for the further assumption that the proportion of nontransit grain is substantially greater in export than in domestic traffic, particularly since about one-third of our grain exports is in the form of flour. This flour must be milled somewhere, which means transit. Not a large proportion is milled at the ports of export. Assuming that the nontransit proportion is somewhat larger in the case of export than domestic, such difference as may exist in this respect falls far short of justifying the proposed difference of 10 or 15 per cent in the rates.

The suggestion that all grain rates should be put on a higher level in order that export rates may be required to be placed on a lower level, it seems to me answers itself. Why should the producers of 00,000,000 bushels subsidize the producers of 200,000,000 bushels? About one year ago the carriers, in a commendable attempt to aid in a national program to diminish the surplus supply of wheat in this country, voluntarily established emergency export rates on a basis substantially lower than any rates theretofore prescribed by us. While the results of this experiment have not been subjected to the clarifying test of examination and cross-examination on a public record in a proceeding before us, and therefore the facts are not available here, it is my understanding that the emergency export rates produced no appreciable effect in moving wheat out of the country. But even if they had produced the desired effect we would still be without power to compel the railroads to publish them unless the rates fell within the zone of reasonableness. It is my understanding that many of these rates were established on a level below that zone. Whatever the facts may be in this regard, we are establishing herein rates as low as we can lawfully prescribe. Having done this, on what basis of law and equity can we compel the carriers to apply still lower rates? If they voluntarily wish to do so as an aid in the exportation of wheat, we may grant such authority as we granted in connection with the emergency export rates last year. To illustrate, if the carriers, in an effort to aid in the exportation of wheat, should apply to us for authority to publish on short notice a postage-stamp rate on export wheat, I would probably vote to grant that authority, depending upon the weight of the representations made; yet, while there can be no doubt regarding our power to prescribe export rates, we are utterly without power to force carriers to publish a postage-stamp rate under present conditions. Furthermore, who would receive the benefit of lower export rates, if published, is a much debated question in this record. It is clear, however, that frequently, if not generally, the producer of the grain derives little or no benefit from them.

I have already pointed out that alleged differences in transit services could not justify the lower export rates proposed. It is further suggested that loading of export grain is heavier than domestic. The record shows that the average loading of wheat in the western district is in the neighborhood of 41 tons. The general tariff rule is the prescribed minimum of the marked capacity of the car. The limitations of the commercial unit on flour, for instance, find no application to the grain and if the marked capacity of the car which operating officials of the carriers have applied with practical unanimity in the transportation of the grain is too low, the minimum should be increased to something higher and applied on both domestic and export traffic. There is no basis in this record to justify an order to that effect. The point I wish especially to emphasize in this connection is that heavy loading is not an attribute of export grain shipments alone and can not therefore be ground for a decisive argument from a cost standpoint in support of lower export than domestic rates when the domestic rates have been fixed on the lowest lawful basis. Nor can the argument based on trainload shipments be given substantial weight. It is not a fact that a large proportion of export grain moves in trainload quantities. In fact, trainload movements on all grain are the exception. And when it is attempted to attach weight to a theory of lower costs when a larger proportion of the cars in a train are loaded with grain, it is only necessary to point out that cars require certain handling in making up trains, irrespective of their contents. These costs, therefore, do not vary with the character of the contents; nor do variations in costs occur after the cars have begun to move as a part of the train. In other words, the alleged lower costs on export as compared with domestic grain find little if any substantial support when the business as a whole is considered and assuredly, whatever differences there may be as between domestic and export grain, such differences are probably no greater than differences that could be suggested as a result of refinements in calculations relating to any other important class of traffic. As I understand this record, there would be no justification for an order requiring the carriers to apply export rates lower than the rates which we have prescribed herein on all grain.

There is definite evidence in this record showing the proportion of grain which originates on branch lines in specified territories and on designated railroads. I shall not reproduce those figures here. But there is no basis for the assertion that export traffic is main-line movement and domestic traffic is branch-line movement.

Another peculiar fallacy appears to have found its way into arguments relating to export grain. It seems to be assumed on the part of many that surplus wheat is a definite quantity which can be

drawn off at one time like an excess of water from a teakettle. When the excess has thus been drawn off, it is argued, the country will be placed on a domestic basis, which is supposed to mean a higher price. Those producers who have not sold their grain will then get this higher price, it is said. Where these philanthropic producers are to be found who will remove the surplus by rushing their wheat out of the country early in the season at the lower export price in order that other producers may later realize the higher domestic price has not been explained. The weight of the evidence does not support this naive theory.

To the extent that export rates tend to accumulate unsold grain at the ports they tend to depress the price. The evidence shows that the "position" of unsold grain is of paramount importance. Unsold grain accumulated at a port is "at the mercy of the exporters." This is so well understood by competent grain merchants that they cease buying when their accumulations in excess of sales reach stated limits at a given port. The evidence on this point is conclusive. Not so with the great interior grain markets. There grain may be accumulated in unlimited quantities, limited only by facilities, because that grain, unlike grain "in the show window" at a port of export, is in a strategic position, where it may receive the benefit of every favorable development and can generally be moved commercially in several different directions. As pointed out in the report, considerations like these must be given proper weight in a grain-rate structure.

It is suggested that our finding as to reparation is summary and utterly inadequate in that there is no discussion or weighing of the evidence as bearing upon particular complaints which seek reparation, and that such complaints are not even enumerated in the report.

All complaints disposed of in connection with this proceeding, together with a summary of the issues in each, are shown in Appendix A. Only 7 of the 40 cases included therein seek reparation. Two of these, Nos. 20474 and 21079, were heard on this record and are discussed in the report. At the hearing the claim for reparation in No. 21079 was withdrawn. Of the other five, four cover rate adjustments between points in the Southwest, one from Kansas and Oklahoma to New Mexico, one from New Mexico to Texas, one from Texas to Galveston, and one from Oklahoma to points in Arkansas on the Missouri & North Arkansas Railway. The other relates to transit at Minneapolis. The rates assailed in each of these complaints are a part of the general revision of grain rates required herein, and our disposal of the issues as to reparation is in harmony with our recent findings in *Western Trunk-Line Class Rates*, 164 I. C. C. 1, at page 217, where we denied reparation in a number of complaints without specifically detailing the allegations and evidence

adduced in each complaint other than as listed in an appendix to that report. It is also in harmony with the general discussion of the numerous issues presented upon this record.

EASTMAN, *Commissioner*, concurring in part:

Although it contains much with which I am not in accord, I have joined in the adoption of the report in this proceeding because it will, on the whole, improve the existing situation, and such a report as I would prefer can not be adopted. I know, also, that the commissioner and his assistants who have been in immediate charge of the proceedings have had an extraordinarily difficult task, and the report is the product of sincere and devoted endeavor on their part to find the right answers to the highly controversial questions which have beset them on every side. Moreover, the matters upon which I disagree with their conclusions are not one-sided. The difference of opinion is not so much one of principle as it is one of the weight to be given to established custom. But while I have, for these reasons, cast my vote for the report, I think that it may be helpful for me to tell why I would have preferred certain different conclusions.

The rates in issue are on grain and grain products. That grain agriculture is depressed admits, I believe, of no doubt. Respondents contend to the contrary, but it is inconceivable that the cries of distress which have risen from the western land are wholly, or even largely, fictitious. The evidence warrants no such conclusion. This depression is a fact to be taken into consideration along with other pertinent facts, in determining what rates are reasonable. The extent to which the farmer will benefit from reductions is uncertain. He may, and probably will, be helped a little, but it will not go far to solve the agricultural problem. That, however, lies beyond our province.

In determining what are the "lowest possible lawful rates" we must first decide what services the rates are to cover. This raises three important questions:

1. Whether the rates should be the same on all kinds of grain.
2. Whether they should be the same on grain and grain products.
3. Whether or not a separate charge should be made for transit service.

Coarse grains.—In western territory east of the Rocky Mountains, excluding Illinois, the rates on coarse grains are now 10 per cent less than the wheat rates. West of the Rocky Mountains the rates are the same, as they are in the East and the South and in Illinois. Rates on flaxseed are generally about 12 per cent higher than the rates on wheat. During Federal control the rates on coarse grain were uniformly made the same as on wheat, and this was approved

by division 2 in *National Council Farmers' Asso.* v. *Director General*, 56 I. C. C. 399. I quote the following from pages 408–409:

It is shown by defendants, and not successfully contradicted, that conditions surrounding the transportation of coarse grain are substantially similar to those involved in the transportation of wheat but that wheat loads more heavily than does coarse grain. The fact that coarse grain is less valuable than wheat does not of itself establish the propriety of lower rates on coarse grain than on wheat. There has been no definitely established relationship as between the rates on coarse grain and those on wheat.

Subsequently, in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C. 85, a 10 per cent difference in favor of coarse grains was required in all of western territory. At page 100 we said:

This finding is not in harmony with that in *National Council Farmers Asso.* v. *Director General, supra*, but is based upon the present record, which shows a present different relationship of value between wheat and coarse grains than was developed in the cases mentioned, and refers to a normal condition.

In a report upon further hearing, 69 I. C. C. 562, rates in Illinois territory were released from this finding, because, among other things, it would result in the "projection into the eastern and southeastern territories of two sets of rates, applicable on wheat and on coarse grains, in lieu of one set as at present." In a third report, 80 I. C. C. 362, the finding was vacated as to Mountain-Pacific territory, largely because a parity of rates on wheat and coarse grains had been the custom in that territory, and the record indicated "that this common basis was generally acquiesced in by producers and shippers, and no complaints to the carriers or rate-making bodies are disclosed as having been made."

The record here shows, substantially without dispute, that the unit cost of hauling coarse grains is somewhat greater than the cost of hauling wheat, chiefly because of the lighter loading of the coarse grains. The latter have a lower value than wheat; but it seems to me that in view of the depression from which the producers of both kinds of grain are suffering, and the importance of the rates to the producers, the element of value will be given all the weight that it can properly be given under the circumstances, if coarse grains, with a somewhat higher transportation cost, are accorded the same rates as wheat. In other words, I do not believe that we are justified in imposing a burden upon wheat, which is what lower rates for coarse grains would involve, for the sake of granting a concession to the latter. The same reasoning would preclude higher rates for flaxseed, since there is no proof that it costs more to haul flaxseed than wheat. However, it seems that the shippers would generally acquiesce in a uniform differential of 2 cents over wheat, and this seems a fair compromise.

Transit.—At the present time so-called free transit service is accorded grain and grain products in western territory, except on the northern lines between Minneapolis and the Pacific coast. Separate charges for such service are made on those lines and also in the East and South. From a transportation point of view, beyond question a separate charge should be made. We have frequently found that "transit is a thing of value to the shipper, involving additional service on the part of the carrier, for which a reasonable charge may be made." As was well said in *Mercantile Lumber Co.* v. *I. C. R. R. Co.*, 53 I. C. C. 663, 666:

> Transit involves a service rendered to those making use of it, and the cost should be borne by them instead of by the shipping public generally. There can be no question but that defendants may exact a reasonable charge for the extra service they perform where a shipper takes advantage of a transit arrangement. It is a thing of value to the shipper and of expense to the carrier.

There is, of course, no actual "free" transit service. It is not the intent of the carriers to give anything away. Either there must be a separate charge or the cost of the service must be included in fixing the level of the line-haul rates. The objection to the latter plan is that transit is not always an incident of the line haul. At times this service may be furnished, not infrequently at a number of points en route, but at other times it is not furnished. Whoever pays the freight, whether he be the farmer, the middleman, or the consumer, ought not to be required to pay for a service which he does not seek or receive. The cost of transit service, as stated in the case above cited should plainly be borne by those who make use of it.

This principle is recognized on most other traffic. There is generally a separate charge for transit, although it may not be fully compensatory. And in theory the principle is conceded here. The failure to make a separate charge is defended on two grounds: (1) Expediency, i. e., that it has been the custom, on which millers and dealers have relied, and that a change in this custom would cause disaster to establish industry; and (2) equality of privilege, i. e., assuming no charge would be made for stoppage at a rate-break point, that undue preference of the millers and dealers located at such points can only be avoided by "free" transit at other points. I shall discuss this defense a little later.

It is also conceded of record that there have been extensive and extraordinary abuses in transit service, arising chiefly from the competition of carriers for traffic, particularly those with indirect routes. After leaving the farm, grain may be "transited" several times before it reaches the final destination in the form of some manufactured grain produce, which may even be a neatly packaged cereal breakfast food. And in the course of this oft-interrupted journey,

it may wander about the country in serpentine fashion. Illustrations are given in the majority report. There may be actual back hauls of many miles. All this is done for the same rate as would be charged if the grain were hauled by a direct route without stop from origin to destination. At times the carrier which hauls the traffic from the transit point, instead of receiving compensation, finds that it has to pay for the privilege. This abuse of transit is especially characteristic of the Southwest, and is urged by the carriers of that region as a compelling reason why their grain rates should be relatively high. The report which we have adopted does something to curb the abuse, by finding that the number of stops in transit should be limited to two, in addition to one stop for official inspection. But inasmuch as every stop in transit involves a terminal service when the grain or grain product, as the case may be, is delivered to the mill, elevator, or other storage point, and another when it moves out, even this means that the through rate may have to cover six separate terminal services. Obviously this makes it necessary to inflate the line-haul rates, without regard to unduly circuitous hauls and other forms of abuse which are not curtailed.

Transit charges on the northern lines vary from 1.5 to 2.5 cents per 100 pounds. On this record I think that a reasonable charge could properly be fixed at 2 cents per 100 pounds. This may not fully cover the additional expense involved, but the record is not clear on this. The charge should be made wherever there is a stop in transit requiring the unloading and reloading of cars and additional service by the carriers, and whether or not the point is a rate-break point. This would include a stop for milling when the grain is moved out of storage to a mill in the same switching limits. In my opinion the charge should even be made at ports, in connection with a through movement, provided the stop involves additional service by the carriers or the commodity which moves by water is not the same as that which reaches or leaves the port by rail. Provision at ports for such a charge, or its equivalent, might require some ingenuity, but I am confident that the problem could be worked out. One stop for official inspection should, however, be covered by the line-haul rate, for such a stop seems to be a necessary incident to the movement of the grain. Ordinarily, also, it requires little extra service on the part of the carriers. Additional charges should be levied for out-of-line and back-haul movements in connection with transit service. What such charges should be I am unable upon this record to say. Their level could be left to the initiative of the carriers, subject to possible suspension and further investigation.

Grain products.—The general practice in the western district is to charge the same rates on grain products as on the grain out of which

they are made. Thus, wheat flour takes wheat rates, and corn me takes corn rates. In some instances, however, bran, shorts, and mi dlings, which are by-products of wheat, are accorded the lower rat on coarse grains. The exceptions to this general practice are th flour is generally charged higher rates than wheat from the territo east of the Rockies to destinations in the Mountain-Pacific grou and to a considerable extent within that group. Until quite recentl also, higher rates were charged on flour to Texas destinations. I the East that is the normal practice, and it also prevails to a co siderable extent within the South. Within the western district, also appears that the grain rates are not infrequently charged o such grain products as prepared and packaged breakfast foods.

The record shows without dispute that it costs considerably mor probably in the neighborhood of 25 per cent, to transport grain pro ucts than wheat. In general the grain products are also of mater ally higher value. Judged by customary rate-making standard they clearly should take higher rates than wheat. The parity i rates with grain is defended solely on grounds of expediency. It urged that mills have been established in the grain-growing countr in reliance on this custom; that their presence there is of aid to th farmers; and that they would be forced to move if rates higher tha the grain rates were charged on flour and meal. I shall advert t this argument later.

In my judgment the primary grain products should take rates 1 per cent higher than the rates on grain, and where there is millin in transit the final rate applied should be the rate on grain pro ucts from the origin of the grain to ultimate destination. Speciall prepared flours or breakfast foods should take even higher rates.

On the three points, therefore, my conclusions are that coars grains and wheat should take the same rates; that a separate charg of 2 cents per 100 pounds should be made for every stop in transi except one stop for official inspection, and additional charges levie for out-of line and back hauls; and that primary grain product should take rates 10 per cent higher than the rates on grain. I should be noted that if coarse grain is to have rates lower tha wheat, if transit is to be "free," and if grain products are to hav the same rates as grain, it becomes necessary, in determining th level of the rates in different parts of the western district, to con sider not only differences in ordinary transportation conditions bu also differences in the extent to which coarse grains move as com pared with wheat and flaxseed, in the amount and character o "free" transit service furnished, and in the extent to which grai products move as compared with grain. These are differences whic

affect the level of the rates which may properly be prescribed and which are quite as important and controlling as differences in ordinary transportation conditions. I doubt whether they have been sufficiently considered in the report adopted.

The influence of these factors was pointed out in *Grain and Grain Products*, 122 I. C. C. 235, 254–255. It was there shown that in 1924 the earnings of the Great Northern on grain and grain products averaged 9.71 mills per ton-mile and 37.52 cents per car-mile for an average haul of 355.5 miles, whereas those of the Rock Island averaged 8.62 mills per ton-mile and 28.62 cents per car-mile for a shorter average haul of 284.9 miles. These figures, and others like them, were made a part of the record herein and were in no way controverted. Yet it was shown in the former case that 82 per cent of the Great Northern's grain originates east of the Montana-North Dakota line, so that its earnings on this traffic are derived chiefly from rates which the carriers contend are relatively low. The Rock Island, on the other hand, is a typical grain carrier operating in western trunk-line and southwesten territories, and in the latter territory, at least, the rates are relatively high. Undoubtedly the more favorable earnings of the Great Northern, which are even more favorable than they seem on their face, if due consideration be given to average length of haul, result from the fact that it hauls very largely wheat and flaxseed, with little "free" transit service, whereas the Rock Island operates in territory where coarse grains and grain products constitute a much larger proportion of the traffic, and where "free" transit service is accorded most liberally.

Situation of the millers.—I come now to the considerations of expediency which are urged upon us by the millers and dealers. Regarded from one point of view and stated baldly, what they urge is that we fix rates artificially, in disregard of transportation costs, for the purpose of encouraging forms of industry in certain regions in preference to other regions. In my opinion we have been and could be given no such function by Congress. Reference is made to the fact that in the Hoch-Smith resolution we are directed, in making changes, adjustments, and redistribution of rates, to give due regard "to a natural and proper development of the country as a whole." But no development of the country is "natural and proper," as I see it, which rests upon an artificial manipulation of rates in disregard of the costs of transportation. We are also enjoined in that resolution to adjust rates "to the end that commodities may freely move." But this does not mean, I believe, that commodities must freely move from any and all points regardless of geographic and other natural conditions. From another point of view, however,

what these interests are urging is that we give controlling weight, in fixing the rates, to long-established custom. This is a more debatable proposition. I think that we may give such custom *some* weight, but by no means controlling weight. Even some weight is of doubtful propriety, in view of *So. Pacific Co.* v. *Interstate Comm. Comm.*, 219 U. S. 433.

In this proceeding the millers, dealers, and markets have consumed more time and record space than any other interests. One reason for their activity is indicated by the following extracts from a brief filed by an association of millers:

> The combined capacity of all the flour mills in the eastern and western districts approximates 984,610 barrels of flour daily, or a potential capacity of 295,383,000 barrels of flour per year, which is nearly three times the domestic consumption of the United States.
>
> The Department of Agriculture of the United States, in its 1928 report, points out that the per capita consumption of wheat flour in the United States has declined more than 20 per cent during the past 40 years. In 1879 the annual consumption of wheat flour was equivalent to 5.6 bushels of wheat per person. Since 1919 it has been approximately 4.25 bushels. The per capita consumption is about 16 per cent below what it was before the war, and 24 per cent below that of 1879.

These statements reflect an overexpansion of the milling industry, combined with a relatively falling demand, which must occasion the keenest competition and prevent abundant prosperity. No doubt a similar situation exists among the dealers and markets.

Throughout the record and upon argument the millers, dealers, and markets, while conceding their selfish interest in the rates, have endeavored to show that their activities and their various rate privileges, such as "free" transit and rate breaks and the parity of flour and wheat rates, all operate to the advantage of the farmer and result in a better price for his product than he would otherwise obtain. It has at times been difficult to understand how the farmer, with all these friends working zealously in his behalf, can yet be in a state of depression. There is a tendency, also, to personify the market. A great market place, like Kansas City or Minneapolis, is apparently thought of as a single buyer, and there is fear that the producer of grain will be in the grasp of a monopoly unless he is able to reach at least two markets at equal freight rates. As a matter of fact a market is the trading place of a great many competitive buyers and sellers, and also buyers at different markets may often compete in the same producing area without an equality of freight rates therefrom. Thus Chicago buyers compete with Minneapolis buyers in South Dakota and St. Louis buyers with Omaha buyers in Nebraska. Many other illustrations could be given. Some of the great milling companies buy in most of the markets and direct from the producer

as well. In the early crop-moving season Minneapolis buyers have been known to go as far south for grain as Texas and buy there in competition with near-by mills. And whether the flour mills stay where they are or change their location, the ultimate consumers will remain to be fed and there will be the same demand for the various kinds and grades of grain for milling purposes.

While I am no expert on the subject, my impression, for what it may be worth, is that it is highly important to the farmer in marketing his grain that all unnecessary waste and duplication in the process of distribution between the farm and the ultimate consumer be eliminated; and certainly much unnecessary waste in transportation now exists and is so much dead weight which the freight rates must carry. I confess, also, that I am unable to see how the much vaunted "futures" markets can in the long run enhance the cash price of grain, any more than a man can lift himself by his boot straps, although these markets, due to their speculative possibilities, may cause temporary fluctuations in the cash price both up and down. Finally, in addition to the elimination of waste in distribution, I am strongly inclined to believe that to ensure the best price for their product proper cooperation among the farmers themselves is far more important than such matters as the "pulls" of competing market places, of which we have heard so much. But these reflections trespass on the function of the Farm Board.

While I believe that it has no place in the determination of the reasonable rates, it may be well, however, to consider briefly the contention of the mills in the grain country that if flour were given a differential over wheat and if a separate charge were made for transit, they would be obliged to move to the East, and some say to the Atlantic seaboard. This contention was made over and over again on the record and in argument, but in general it was characterized by an absence of discussion of the economic factors affecting the situation. Reliance was placed on strong assertion, and the appeal was to sentiment rather than to economics.

Let us consider, first, the question of a flour differential. In order to determine whether or not such a differential would cause these mills to move, it is necessary to have knowledge of such conditions as these in every part of the country: (1) The prevailing wages and efficiency of mill hands; (2) the cost of power—water, steam, or electric; (3) the level of land values and rents; (4) the consumption of both grain products and by-products. The record contains very little information upon the first three points, but it does contain some information on the fourth. In 1925, it appears that 45,260,800 barrels of flour were consumed in the western district and 62,836,600 barrels in the East and South. It must be obvious that there would

under no circumstances be economy in moving mills to the East for the purpose of producing the flour consumed in the West. In 1925, however, 34,232,600 more barrels were produced in the West than were consumed, whereas in the East and South production fell short of consumption by 28,174,000 barrels.[1] The question is whether, if there were a flour differential, it would be economy to increase the production in the East and lessen the production in the West.

In considering this question it must be borne in mind that to produce a barrel of flour, weighing 196 pounds, 4.5 bushels of wheat, weighing 270 pounds, are necessary, the remainder taking the form of bran, shorts, and middlings, with a small percentage of sheer waste. In order to produce a barrel of flour on the Atlantic seaboard, therefore, 74 excess pounds of freight must be shipped. Whether or not this will be a wasteful thing to do depends in part upon the market for the by-products. Obviously there will be a waste if they have to be shipped back into the interior. The record contains no statistics showing the consumption of by-products by States or regions, but they are mostly fed to stock, and it seems a safe conclusion that there is greater consumption in the West than in the East and South. At all events there is certainly little consumption, relatively, on the seaboard, so that back hauls into the interior would be necessary in the case of the bulk of the by-products, and probably the average back haul would be of very considerable length.

Not only that, but a mill at the seaboard would find back hauls on the flour necessary to reach all markets except those immediately at the seaboard; and in selling flour even to bakeries and dealers located within the same switching district, it would be necessary to pay switching charges which would probably be absorbed in the case of flour shipped from the West. The fact is that the seaboard is not now and never will be a favorable location for a flour mill, except, perhaps, with respect to export flour. The demand for that is at best not much more than 10 per cent of the domestic demand, and it is irregular, so that it is not good business for a mill to limit itself wholly to the production of export flour. It must be evident that the most favorable location for a mill is where a large part of its market lies beyond it, in line with the movement of the grain from the farm, so that it can ship its product without back haul and on transit in connection with the through rate.

The development of mills at the seaboard or in near-by territory may, therefore, be dismissed from consideration, and the real ques-

[1] Production fell short of consumption by 20,549,000 barrels in the East and by 7,624,400 barrels in the South. In this connection it is of interest to note that in 1925 the wheat production in the East was sufficient to make only 2,131,556 less barrels of flour than were produced. The similar deficiency in the South was 3,328,112 barrels.

tion is whether a flour differential would make it profitable to increase production at mills in central territory, and particularly at mills located on Lake Erie. Broadly speaking, such mills would have a conceivable advantage in the sale of flour only in territory lying beyond, in line with the inbound movement of the grain. Except within very narrow limits, they would certainly have no advantage where a back haul on their flour would be involved. Moreover, in shipping on transit to points beyond in connection with all-rail movements, the final rate paid, if usual transit rules were applied, as I believe they should be, would be the rate on flour all the way from origin of the grain to ultimate destination. Under such circumstances they would have no advantage over western mills shipping on transit in connection with the same through rates. Mills at Buffalo or other ports on Lake Erie, however, receive much of their grain by water, and it is carried by boats which are not common carriers and whose charges are not under our supervision. A differential on flour from western territory might be of some help to those mills in competing in trunk-line territory or New England. The amount of the benefit would apparently depend, however, upon the extent to which they would be able to find a market for their by-products in the same territory, without back hauls; upon the proportion of their grain brought in by water; upon the level of the rates maintained by the official territory lines upon ex-lake flour; and upon the level of the new rates upon flour from the West, as compared with the present rates. The new rates, although including a differential, might average no higher than the present rates, in view of the reductions which we are requiring in the wheat rates in western territory. The ability of the western mills to compete would also be affected, of course, by their operating costs and the selling qualities of the flour which they produce in comparison with flour made by the Lake Erie mills.

A further important factor which enters into the situation is that the mills which are located near the grain fields have an advantage, due to their close contact with the producer, in obtaining the choicest grades of wheat at the most favorable prices. This is because the producer is assured of a quick and definite return if he sells to near-by mills, and he usually prefers to trade in this way.

The upshot of this matter is that the record does not present the economic facts which are necessary if the effect of a flour differential is to be appraised with any accuracy. It seems clear, however, that such a differential would have a much less serious effect upon the western mills than is commonly supposed; and that the benefit, if any, to eastern producers would be confined very largely to the mills on Lake Erie.

It should be borne in mind that these mills on Lake Erie, owing to the low cost of moving grain by boat from Duluth, have long had an apparent advantage over the western mills of substantial extent in the sale of flour in trunk-line and New England territories; but their growth was slow until the development of the great wheat fields in western Canada. This Canadian wheat feeds into the Great Lakes at Port Arthur and Fort William, and the Buffalo mills, which are on its direct route to the seaboard, can mill it in bond for export. It is this situation which has given the great impetus to Buffalo milling in recent years, as we stated in *Grain and Grain Products to Eastern Points*, 122 I. C. C. 551, 558–559:

> The proposed rates on flour are designed primarily to reduce the movement of wheat from Duluth to Buffalo by lake and the production of flour for domestic purposes at Buffalo. However, it is not this flour production which has been primarily responsible for the decline of Minneapolis or the rise of Buffalo as a milling center during recent years. Until 1925, when the large Minneapolis interests began the operation of two additional plants at Buffalo, the Buffalo production of domestic flour showed more of a tendency to decline than to increase. The recent development of Buffalo has been due chiefly to the transfer to that point of practically all the export milling that Minneapolis formerly enjoyed. Buffalo is a natural gateway for intercepting and milling wheat from practically all North America. Minneapolis is a natural gateway only for grain from the affected and immediately adjacent territory. Buffalo receives its grain largely from sources from which Minneapolis mills could not normally draw except at a penalty. It is milling in bond for export large quantities of Canadian wheat brought over the lakes from Port Arthur and Fort William, Ontario. Wheat from the Central West, the production of which has increased in recent years, also comes to Buffalo for milling.

And again at page 562:

> According to Missouri River millers, it is the Minneapolis, rather than the Buffalo, prices that they have to meet in selling flour in the East. A very large proportion of the flour consumed in the destination territory comes from the Northwest. Competition from that source has been particularly keen in recent years. The Buffalo production, as we have already seen, is largely for export. Buffalo does not have sufficient capacity to continue its export production and also supply a large proportion of the domestic requirements in the destination territory.

It will be noted from the above that milling at Buffalo is not confined to grain received by lake, but that to meet its needs in the manufacture of various grades of flour it also draws wheat from the central West.

Certain statistics introduced of record by the Southwestern Millers League are of great interest in this connection. They show that, comparing the year 1925 with the year 1914, the production of flour in the East and the South decreased 6.8 per cent, whereas the de-

crease in the western district was only 0.4 per cent. In the South the decrease was 9.4 per cent; in the East it was 5.9 per cent; and in the East with the exception of New York State, where the Buffalo mills are located, it was 29.2 per cent. Production in the northwestern district [2] decreased 14.4 per cent, and in the central western district [3] 28.3 per cent; but it gained 22.2 per cent in the southwestern district [4] and 12.8 per cent in the Mountain-Pacific district.[5] The gain, so far as production for eastern and southern markets was concerned, was in the Southwest rather than in the East. It is of interest to note that the production in California, a State which has the supposed benefit of a flour differential on traffic from other States, decreased 9.4 per cent, whereas in Utah, a State which suffers the supposed disadvantage of that differential, the production increased 105.6 per cent. In Colorado it remained practically stationary. In Texas, another State which has had the supposed advantage of a flour differential, the production increased 9.4 per cent, whereas in Kansas and Oklahoma, two States which have suffered the supposed disadvantage of that differential, it increased 19.8 and 14.3 per cent, respectively.

These figures are confirmed by other statistics showing mill capacities in 1927 as compared with 1920. In the West the decrease was 7 per cent, whereas in the East and South it was 14.2 and 12 per cent, respectively. Eliminating New York, the decrease in the East was 22.3 per cent. The decrease was 19.6 per cent in the central western district, 14.2 per cent in the northwestern district, and 5.5 per cent in the Mountain-Pacific district; but in the southwestern district there was an increase of 3.2 per cent. In California there was a decrease of 18.3 per cent, whereas there was an increase of 21.2 per cent in Utah and a slight increase in Colorado. In Texas the increase was 10.2 per cent, and in Kansas it was 11.5 per cent. A slight increase occurred in Oklahoma.

Passing from the flour differential to the matter of a transit charge, it is difficult to see how such a charge will operate as a handicap to the western mills, provided it is uniformly assessed in a uniform amount, not only at transit points but at rate-breaking points and ports. This was, indeed, the conclusion of the chief traffic officer of the Chicago, Burlington & Quincy. It is probable, however, that such a charge would reduce the amount of transit service furnished.

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[2] Minnesota, South Dakota, North Dakota, Montana.
[3] Wisconsin, Illinois, Iowa.
[4] Nebraska, Kansas, Missouri, Arkansas, Oklahoma, Texas, Louisiana.
[5] Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, New Mexico, Colorado, Wyoming.

and that it would unfavorably affect mills so located that they depend upon circuitous routes and several transits en route. Its tendency would no doubt be to encourage the mixing of feeds at points where grain is also stopped for milling. It might also encourage combined storage and milling at points comparatively near to the wheat fields. But these are changes which would help many of the western mills rather than hurt them, and the injured would be those who are dependent largely upon the more uneconomical results of the present transit practices. It is a case where benefits must be weighed against disadvantages, and here the former, I think, would clearly predominate.

Level of the rates.—Throughout this proceeding the Hoch-Smith resolution has been emphasized. In a situation like that which is here presented, that resolution makes it our duty to prescribe the "lowest possible lawful rates compatible with the maintenance of adequate transportation service." In a recent case, *Ann Arbor R. R. Co.* v. *United States*, decided June 2, 1930, the Supreme Court considered and set aside our action, in part under that resolution in *Calif. Growers' & Shippers' Protective League* v. *S. P. Co.*, 129 I. C. C. 25, 132 I. C. C. 582. Referring to the third paragraph of the resolution, which contains the language with reference to the "lowest possible lawful rates," the court made this statement:

> Indeed, it is apparent from the commission's opinions that it regarded this paragraph as requiring it to condemn the existing rates as unreasonable and unlawful, although had they been considered independently of the paragraph, they must have been upheld as reasonable and lawful under the applicable sections, 1(5) and 3(1), of the existing law.
>
> We are of opinion that the commission's construction cannot be supported. The paragraph does not purport to make any change in the existing law, but on the contrary requires that that law be given effect. Nor does it purport to make unlawful any rate which under the existing law is a lawful rate, but on the contrary leaves the validity of the rate to be tested by that law.

Later, in referring specifically to the words "lowest possible lawful rates compatible with the maintenance of adequate transportation service," the court said:

> If they mean no more than that the depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation system they work no change in the existing law.

And it finally arrived at the conclusion that these words "must be held to work no substantial change in the meaning or operation of Sections 1 (5), 3 (1), and 15, paragraph (1), of the existing law."

In *Grain and Grain Products*, *supra*, at page 264, we interpreted this provision of the resolution as follows:

> It sets no new standard of lawfulness, but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits. Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. *Northern Pacific Ry.* v. *North Dakota*, 236 U. S. 585; *Norfolk & Western Ry.* v. *West Virginia*, 236 U. S. 605. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service; in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable. The substance of the provision of the resolution quoted above is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service."

In my judgment this interpretation is entirely consistent with the provisions of the interstate commerce act, although it may be that for the sake of clarity we should have used the words "some substantial margin of profit." I disagreed with the conclusions reached in *California Growers' & Shippers' Protective League* v. *S. P. Co.*, *supra*, because I did not believe that those conclusions were adequately supported by the evidence in the light of this interpretation of "lowest possible lawful rates." But under that interpretation such rates, it will be noted, must be "high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit." Pointing out, then, that it has always been recognized that some commodities may be required to pay a greater margin of profit than others, we reached the conclusion that it is the intent of the resolution that agricultural products affected by depression "shall in this respect be included in the class of most favored commodities."

In its recent decision, above cited, the Supreme Court makes it clear that "conditions in the particular industry may and should be considered along with other factors in fixing rates for that industry and in determining their reasonableness," and that the "depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation system." But if rates can not be reduced below the cost of service plus some substantial margin of profit, as was found in *Northern Pacific Ry.* v. *North Dakota*, 236 U. S. 585, obviously the only way in which the depressed condition of an industry can be given any weight is in determining the margin of profit to be allowed. That

the percentage may be varied is clearly indicated in the case j
cited, where the court said, at pages 598, 599:

> The legislature, undoubtedly has a wide range of discretion in the exer
> of the power to prescribe reasonable charges, and it is not bound to fix unif
> rates for all commodities or to secure the same percentage of profit on ev
> sort of business.

But if the percentage of profit may be varied, obviously
variations may be both above and below the normal percenta
because only in this way can a reasonable average be maintain
It follows, therefore, that our interpretation of "lowest possi
lawful rates," above quoted, is consistent with the interstate co
merce act and the Supreme Court's construction of that act.

We also had this to say in *Grain and Grain Products*, *supra*,
page 266:

> The Hoch-Smith resolution has brought to the forefront the question of
> distribution among commodities of the transportation burden, thus empha
> ing the need for considering the relative costs of service and the rela
> earnings of the various kinds of freight traffic, difficult as this task may be

We further said:

> It is also clear from the record in this case that the rates on grain and gr
> products, particularly to the primary markets, are deserving of a considerat
> from the standpoint of relative earnings and fair share of the transportat
> burden, which perhaps has not hitherto been sufficiently given them. We h
> pending No. 17000, Part 7, *Grain and Grain Products*, hereinafter called
> general investigation, which embraces the rates on grain and grain product
> the entire western district and from that district to the ports of the country
> export. That proceeding will afford the opportunity for such consideration.

This was notice that in this general investigation we would w
to obtain all the information possible in regard to the cost of tra
porting grain and grain products. Several of the State comm
sions responded to this suggestion and at considerable trouble a
expense prepared and submitted cost studies that were more or l
comprehensive. Statistics and studies were also presented by
Bureau of Statistics. The carriers, however, refrained from offeri
any direct evidence in regard to costs and contented themselves w
rebuttal evidence of fragmentary character in criticism of the stud
made by others. It is their position that it is not practicable
ascertain the cost of hauling grain and grain products. Yet this
not been their position with respect to other forms of traffic, in c
testing the orders of State commissions on the ground of confis
tion. In *Nor. Pac. Ry.* v. *North Dakota*, 236 U. S. 585, at page 5
where lignite rates prescribed by the State were found to be con
catory, the following was quoted from the opinion of the State cou

As a result of the painstaking work of the accounting department of this railway company, and its endeavors to render all the assistance possible in determining the matter of the apportionment of expense to this commodity, as is evidenced by the care and detail in the accounting, the information furnished by the exhibits, and that the books of the company have been thrown open to the experts of the State, we are enabled to arrive, with a reasonable degree of certainty, at the proper proportion of expense that should be chargeable against the revenue received from the carriage of this commodity.

The State court made a finding in dollars and cents of the amount of expense chargeable to the traffic in question, and this finding was sustained by the Supreme Court. See also *Nor. Pacific* v. *Dept. Public Works*, 268 U. S. 39, and *Boyle* v. *St. Louis-San Francisco R. R.*, 222 Fed. 539.

Under the accounting and statistical systems now maintained by the carriers it is difficult to arrive at a wholly satisfactory approximation of the cost of handling any particular form of traffic, without a very elaborate and costly special study based on checks and observations extending over a comparatively long period of time and having for their purpose the accumulation of data which are not recorded as a matter of normal routine. However, although no such special study has here been made in any comprehensive way, there is considerable evidence of record bearing on costs, and by the reasonable exercise of informed judgment it is possible, I believe, to arrive at conclusions with respect to the average costs of transporting grain and grain products in the western district which will not be arbitrary but within reasonable limits of accuracy.

In the resolution the words "lowest possible lawful rates" are qualified by the phrase "compatible with the maintenance of adequate transportation service." In order to maintain such service, carriers must in the long run be able to earn what may be termed a minimum fair profit. It is imaginable that in the western district, or certain of its regions, competitive conditions so control and limit the rates on other important traffic that the only way for the carriers to earn a fair profit is to make the rates on grain and grain products pay more than their fair share. It may be urged with much force, also, that if this fact were established it would be our duty under section 15a to permit the rates on grain and grain products to be maintained at such requisite level. By similar reasoning it is urged by representatives of railroad security holders that if the carriers in a given group are earning less than the fair return contemplated by section 15a we are estopped from requiring reductions in rates affecting any substantial volume of traffic, no matter what the level of those rates may be.

I can not accept this theory. Our duty under section 15a is to be performed in the exercise of our power "to prescribe just and reasonable rates," and those words in turn are to be read in the light of the Hoch-Smith resolution. Our duty in this proceeding, as I see it, is to prescribe rates on grain and grain products designed, on the evidence before us, to cover the cost of handling that traffic plus a substantial margin of profit, although not as large a margin as might be reasonable in the case of certain other forms of traffic. It will, however, remain our duty under section 15a to see to it that the carriers have a general body of rates sufficient to produce, "as nearly as may be," the fair return stipulated by that section. It may develop that this can not be accomplished, owing to various competitive conditions, without imposing a further burden upon grain and grain products. But we can not assume in this proceeding that this will prove to be the fact. It remains to be established after a thorough consideration of the rates on other forms of traffic.

While I concede that such consideration of other rates is a duty which rests in the final analysis upon us, the carriers should realize that it is a task of vast proportions, that they have a much more intimate knowledge of the rate situation within the regions in which they operate than we can possibly have, and that considerable delay may ensue in locating rates which are unnecessarily depressed, unless they take the initiative in bringing such rates to our attention. It would seem that this would be a thing which they would be very ready to do, but there is reason to believe that the competition among the carriers is so intense that where the movement of important traffic is controlled by large concerns which can divert it at will from one competitive route to another, the initiative of the carriers in this respect may be subject to paralysis. The representatives of the security holders conceded this frankly upon argument.

It is a situation which calls for courage and cooperation on the part of the carriers, and if they are lacking in these qualities, they will have themselves primarily to blame for the consequences which may ensue. The record here suggests that among the rates which are worthy of analysis are those on cereal breakfast foods and other specially prepared grain products, which are now accorded the same rates as wheat. In fact, the whole grain-products list should be revamped.

Before attempting to derive conclusions from the cost evidence, it may also be well to compare some of the existing rates on wheat with the rates which we have ourselves prescribed on certain other traffic. Such comparisons are shown in the accompanying table.

Miles	Minnesota scale [1]	15026 scale [2]	Southwestern sand and gravel scale [3]	H. & H. bituminous scale [4]	H. & H. anthracite scale [5]	Mason City brick and tile scale [6]	Southwestern brick and tile scale [7]	Southern fertilizer scale [8]	Southern cement scale [9]	Southwestern salt scale [10]	Eastern iron and steel scale [11]
40	4.5	8	2.5	4.25	4.25	5	4.5	5	5	8	6.5
50	8	12	3.7	5.1	6	7	6.5	8.25	9	10.5	11
75	10	14	4.5	6.4	7.3	8.5	8	10	10.5	12	13.5
100	12	16	5	7.25	8.15	9.5	9	11.25	11.5	13	16
150	13	19	6.25	9.1	10	11	10.5	13.75	13	15.5	19
200	14	22	7.5	10.95	11.85	12	11.5	16	14	18	21.5
300	16	27	9.5	14.3	15.2	14.5	14	19.75	16.5	22.5	26.5
400	17.5	31	11	17.3	18.25	16.5	16	23	19	25	31
500	19.5	35	12.5	19.25	20.65	18.5	18	25.25	21.5	27	35
600	.....	38	14.5	22.15	23.1	20.5	20.5	27.75	24	29	38
700	.....	42	16	.....	.....	22.5	22.5	30.25	26.5	31	41

[1] Minnesota intrastate scale on wheat; average loading in western district about 41 tons.
[2] Prescribed on wheat from Oklahoma to Louisiana in *Oklahoma Millers' League* v. *A. & M. R. R. Co.*, 128 I. C. C. 523.
[3] Prescribed (single-line hauls) in *Sand, Gravel, Crushed Stone, and Shells*, 155 I. C. C. 247; average loading about 50 tons, joint-line scale a little higher.
[4] Prescribed on bituminous coal in *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11; average loading about 35 tons.
[5] Prescribed on anthracite coal in *Holmes & Hallowell Co.* v. *G. N. Ry. Co., supra.*
[6] Prescribed in *Mason City Brick & Tile Co.* v. *Director General*, 107 I. C. C. 702; average loading about 34 tons.
[7] Prescribed in *Southwestern Brick Cases*, 107 I. C. C. 681; average loading about 35 tons, joint-line scale 1 cent higher up to 500 miles.
[8] Prescribed in *Fertilizers between Southern Points*, 113 I. C. C. 389; average loading about 23 tons.
[9] Prescribed in *Southern Cement Rates*, 132 I. C. C. 427; average loading about 37 tons.
[10] Prescribed in *Salt between Western and Southwestern Points*, 120 I. C. C. 91; average loading about 29 tons.
[11] Prescribed in *Iron and Steel Articles*, 155 I. C. C. 517; average loading about 32 tons.

In the case of wheat, this table shows the Minnesota scale, which is relatively low, and the so-called 15026 scale, which is relatively high. The compared rates are for the most part on commodities of lower value than wheat, but value plays an insignificant part in the cost of handling traffic, and it is in such costs that we are here primarily concerned. As shown by the footnotes, some of these commodities do not load on the average as heavily as wheat. They all move in box cars, except sand and gravel.

The following table shows also the ton-mile and car-mile earnings under the Minnesota scale at typical distances, on the basis of an average loading of 37 tons, which I think is lower than the present average figure in that region for wheat and coarse grains combined:

	Ton-mile earnings	Car-mile earnings
	Mills	*Cents*
100 miles	24	88.8
200 miles	14	51.8
300 miles	10.7	39.4
400 miles	8.75	32.4
500 miles	7.8	28.8

These can not, certainly, be regarded as conspicuously low earnings.

In this connection mention should be made of the Canadian rates on wheat eastbound to the Lake Superior ports. The rates from

North Dakota and Montana to Duluth range from 39 to 98 per cent higher than the wheat rates from Manitoba and Saskatchewan to Fort William for similar distances. The latter rates, it should be said, are relatively lower than rates in eastern Canada. They apply on coarse grains as well as wheat, and the movement is largely confined to wheat. A separate charge of 1 cent per 100 pounds is made for transit. There is much evidence of record in regard to these Canadian rates. It appears that the Canadian railroads have certain advantages over the United States roads in the way of Government aid and lower taxes, but they also labor under certain disadvantages, such as lesser volume of traffic and higher cost of fuel. In a report dealing with these grain rates, made by the Board of Railroad Commissioners of Canada on August 26, 1927, the following statement was made:

> As to whether the present grain rates are profitable to the railways; it was established by reference to the official traffic returns made by the railways themselves, not only that the net earnings per mile of line were higher in the western grain traffic region than in the region east of the Great Lakes but, also, that it was during the months of heaviest grain movement that the net returns were highest. This applied to both railway systems. It was also shown that the net returns were higher in the years of largest crop. In view of these facts, it does not seem possible to accept as proven the first contention of the railways that the present grain rates are, in themselves, unprofitable.

It can hardly be said that respondents have proved that these Canadian rates do not throw valuable light on the cost of transporting grain, particularly where there is little transit service, and none of it "free," where the proportion of coarse grains and grain products moving on the wheat rate is comparatively small, and where the traffic moves in trainload quantities over direct routes located largely in prairie country.

It is an interesting and rather significant fact that within the last few years there has been more activity in the construction of new railroad lines in the western grain regions, more particularly in the Texas Panhandle and Oklahoma, than in any other part of the United States. In several of these cases we have had to choose between rival carriers in granting certificates of convenience and necessity, and all of them have been characterized by most optimistic estimates of anticipated net earnings. As illustrations, the following may be cited:

Construction of extension by B., M. & E. R. R., 86 I. C. C. 286.
Extension of branch by Great Northern Ry. Co., 99 I. C. C. 432.
Construction by C., R. I. & P., 111 I. C. C. 137.
Construction by C. & O. W. R. R., 131 I. C. C. 253.
Construction by B., M. & E. R. R., 138 I. C. C. 279.
Construction by Chicago, R. I. & G. Ry. Co., 158 I. C. C. 413.

The Great Northern case above cited had to do with the construction of a branch line 50 miles long in the wheat country of Montana. The carrier estimated the gross revenue to its system from traffic to and from the branch at $579,322 for the first year of operation and at $1,345,310 for the fifth year. The corresponding net railway operating income was estimated at $154,035 for the first year and $471,662 for the fifth. Two of the cases cited have to do with construction by the Beaver, Meade & Englewood, which now operates about 65 miles of line in western Oklahoma. Nearly all of the line has been constructed within the past few years, and out of 3,812 carloads which it handled in 1928, 2,700 were of wheat. In 1929, division 4 authorized the Missouri-Kansas-Texas to acquire control of this carrier at a price equivalent to $312 per share for its common stock. *Control of Beaver, M. & E. R. Co.*, 158 I. C. C. 219. The Rock Island also sought to acquire control at the same price.

Returning to the question of transportation cost, the basic evidence upon this question is that furnished by our Bureau of Statistics. It will be well, I think, to describe this evidence a little more fully than is done in the main report. The object was to arrive from the statistics of Class I railways at a reasonable approximation of the cost of transporting grain in the western district. The first step was to segregate the operating expense related solely and apportioned to freight service, as reported by the carriers. From this amount was deducted the expenses reported for "transportation-water line" and also for "miscellaneous operations," for which separate revenues are obtained. The sum so determined was next divided one-third to terminal and two-thirds to line, an apportionment based on the best information available to the bureau. From the terminal expense so arrived at, there was then deducted an estimate of the clerical and handling expense connected with less-than-carload freight, based upon a study made by the western carriers in 1923. Two-thirds of the remaining terminal expense was taken as dependent upon the number of cars handled and one-third as dependent upon the gross weight of cars handled and their lading. The line expense was taken as dependent upon gross ton-miles of cars loaded with revenue freight or empty. From available statistics it was possible to arrive with approximate accuracy at the equivalent number of cars handled during the year receiving two terminal services each, the gross weight of such cars and their lading and the gross ton-miles of cars loaded with revenue freight or empty.

Cost units per car and per ton of gross weight for terminal service and per gross ton-mile for line-haul service were then determined. Finally, from these units there were derived, by considering the per-

centage of empty movement of box cars, the tare weight of box cars and the average loading of the various general classes of grain and grain products, unit costs per 100 pounds for terminal service and for line haul in the case of each one of these general classes. These were operating costs, and to them were added allowances for hire of equipment and joint-facility rents, taxes, and a return on the book value of carrier property. This was done by ascertaining the gross amount of these items, assigning a portion to freight service in the ratio of freight to passenger operating expense, ascertaining the percentage which this portion bore to total freight expense, and then inflating each of the unit-operating costs by this percentage. Return on book value was figured on a 4 per cent and also on a 6 per cent basis, producing alternative final total unit costs. With these data, total costs per 100 pounds of transporting each of the general classes of grain and grain products for 200, 300, 400, and 500 miles were determined, thus furnishing the rudiments of a scale.

This is stating the process followed by the bureau, of course, very briefly and baldly. It was supported by testimony of the director of the bureau, giving in detail, as the result of his years of experience, observation, and study, the reasons for what was done, including any assumptions that might on their face seem arbitrary.

The results may be checked by the criticisms of the State commissions, backed in some instances by very elaborate special studies of their own, and by the criticisms of the carriers. The latter were largely devoted to pointing out, likewise with the help of certain statistical studies, the fact that the bureau's analysis only purported to show the average costs in the western district of hauling traffic in box cars loaded as heavily as cars of grain and grain products are loaded. It did not undertake to give weight to special costs incurred in the handling of the latter traffic, alleged to be such as the furnishing of grain doors and tight equipment, the peak characteristics of the traffic and the consequent storing of cars in or near the grain fields to meet the demands of these peaks, the high percentage of branch-line movement, the relatively high percentage of empty-car haul, extra expense at terminals, and one or two other items.

In considering these alleged "special costs" it is necessary to have in mind the fact, of which we are well aware from long experience, that there are many other important kinds of traffic which the carriers are wont to claim are characterized by "special costs," and that all of these "special costs" are included in the basic figures of freight operating expense used in its analysis by the Bureau of Statistics. These facts were, indeed, conceded by the carriers. The question, therefore, is not simply whether "special costs" attach to the grain and grain-products traffic, but whether in the case of such traffic these costs are

of greater relative importance than in the case of the average of all freight traffic. Upon this point the record throws little light, but it can not be ignored.

In using the cost data in the construction of what has come to be known as a "yardstick scale," [6] I have given consideration to the criticisms which were made of the bureau's original study, and also to certain other matters. The following factors have been given particular weight:

1. The bureau's analysis was based on statistics for the year 1925. More recent figures, reported by the carriers, indicate some substantial improvements in economy of operation.

2. The analysis shows costs of handling per mile. In constructing scales it must be borne in mind that while the rates would be determined by the distances over direct routes, the same rates should in the public interest be applicable within reasonable limits over circuitous competitive routes.

3. The record indicates that there is probably a materially greater empty-car movement in connection with the grain traffic than in the case of box-car traffic in general in the western district. And while the evidence offered by the carriers as to "special costs" is decidedly vulnerable in many respects, it leaves the impression that there is probably some little excess cost of this character, in comparison with the average for all traffic, which ought to be given consideration. But I think that this latter factor is sufficiently covered by using the cost data covering a 6 per cent instead of a 4 per cent return.

4. The analysis does not make any allowance for the passenger deficit in the western district. The carriers contend that it is impossible to reduce this deficit under present conditions by raising fares, and therefore that the deficiency must be supplied through the revenues received from freight traffic. Following this reasoning, it is their position that a proportionate part of the burden must be borne by the grain and grain-products traffic. They measure the deficiency by the amount needed to cover passenger operating expense, equipment and facility rents, and taxes assignable to this service, and 6 per cent upon the book value of the carrier property used in the service. Such an allowance is not, of course, a part of the cost of handling the grain and grain-products traffic. It may fairly be considered, however, in determining the lowest possible lawful rates on such traffic "compatible with the maintenance of adequate transportation service." Upon the present record, I do not think that the grain and grain-products traffic should bear more than a propor-

[6] Scales which can be used as a guide in determining the rates to be applied in the western district.

tionate share of the actual operating deficit incurred in the passenger service. It should not be asked to pay more until there is better proof that unnecessary waste and duplication in that service have been eliminated, and that it is impracticable to obtain added revenue from other forms of freight traffic.

5. Two cents per 100 pounds may fall somewhat short of a fully compensatory charge for transit service; and the excess cost of hauling grain products, in comparison with wheat, is more than 10 per cent. However, it should be borne in mind that when grain is milled in transit, I would apply the flour rate back to the origin of the grain, so that the 10 per cent differential would cover in part a grain movement. This would offset to some extent the apparent deficiency in level of the differential.

In arriving at rates to apply in different sections of the western district, I have taken into consideration the ordinary transportation conditions prevailing in those sections; the extent to which transit service is furnished; and the proportion of the movement which consists of coarse grains and grain products. In constructing a scale, also, I have made the progression more nearly uniform than usual. This is in line with such cost evidence as has a bearing on this point. Moreover, the amount of transit service furnished, the proportion of grain products included in the traffic, and the use of circuitous routes tend to increase with the length of the haul. The scale which I have arrived at is not, of course, to be regarded as a precise mathematical computation, but rather as a product of judgment applied to the best available evidence. I believe it to be sufficiently liberal to the carriers, either under the interstate commerce act or the Hoch-Smith resolution.

The basic "yardstick scale" which I would use would be as follows:

	Rate		Rate
	Cents		*Cents*
5 miles	4	800 miles	30
100 miles	9	900 miles	33
200 miles	12	1,000 miles	36
300 miles	15	1,100 miles	38.5
400 miles	18	1,200 miles	41
500 miles	21	1,300 miles	43.5
600 miles	24	1,400 miles	46
700 miles	27	1,500 miles	48.5

This, of course, is a mere skeleton of the scale, and it would be necessary to fill it out for intermediate distances, and also to extend it for longer distances in some instances.

This basic scale I would apply in western trunk-line territory, except that from South Dakota, Nebraska, Kansas, Colorado, and Wyoming I would increase the yardstick by 5 per cent as far as the

primary markets on the Missouri River and to points on the line of the Omaha between and including Sioux City and St. Paul. I would not increase it from points in Montana and North Dakota, because the traffic from those points is very largely wheat, with a substantial percentage of flaxseed taking higher rates, and because it moves quite generally in volume over direct routes to Minneapolis or Duluth under favorable transportation conditions and with comparatively little transit service. From South Dakota there is a far larger percentage of coarse grains and less concentration of the traffic in moving to the primary markets; in Nebraska, also, there is a large percentage of coarse grains; Kansas is full of mills and there is a large amount of transit service; and the transportation conditions, particularly the volume of this traffic, are less favorable from Colorado and Wyoming. East of the Missouri River and the Twin Cities, the percentage of movement of coarse grains and grain products is large and there is much transit service, but this is offset by the favorable transportation conditions, from the ordinary point of view. Within the Southwest I would increase the scale by 10 per cent, because of the somewhat less favorable transportation conditions, as compared with western trunk-line territory, and the large amount of transit service and volume of movement of grain products. In Mountain-Pacific territory I would increase the scale by 20 per cent, because of the less favorable transportation conditions, except that from points in Oregon and Washington to the Pacific coast ports I would limit this increase to 15 per cent, inasmuch as the transportation conditions surrounding those hauls appear to be more favorable than the average in Mountain-Pacific territory.

Of course these scales should not be applied rigidly, for I have no doubt that origin and destination groupings could be employed advantageously in many instances. These details I have not undertaken to work out, since the general plan which I have thus outlined and which I prefer is not to be adopted. So far as I have been able to determine, also, if we apply the "lowest possible lawful rates" to domestic movements of grain and grain products and charge separately for transit, there are no differences in transportation conditions which justify lower export rates.

As to rate breaks.—Whether or not there should be rate breaks at certain primary markets is a debatable and difficult question. The general plan of rates which I have outlined could be adapted to such rate breaks, if that were deemed necessary, but I am not fully persuaded that it is necessary or advisable.

The rate-break scheme seems to be founded on the thought that there are certain cities which are foreordained to be great grain markets, and that they are, therefore, entitled to a method of con-

structing rates which is of advantage to them in their marketing and which is not extended to other communities. It is asserted that the custom of according a rate break to these particular cities grew up naturally and normally, chiefly as a result of carrier competition. But the same might be said of the basing-point system of rate making in the South, under which a hierarchy of larger cities was created and the smaller communities were relegated to a lesser and subservient estate. There we have not hesitated to interfere with a custom which grew up as a result of many years of carrier competition, and we ought not to hesitate here if the rate-break plan operates unfairly.

That there has been a considerable element of undue preference in the operation of the rate breaks is, I think, quite clear. Some of the principal grounds for criticism have been eliminated by the report which we have adopted. I refer particularly to the fact that these markets have had the benefit of both proportional rates and transit balances. The worst features of this abuse were due to the application of rates over absurdly circuitous routes and to the utter lack of adequate transit regulations, and should have been corrected by the carriers long since. But a consistent application of the rate-break system makes it necessary either to limit considerably the territory from which particular markets may draw grain with advantage, or else to distort the rates somewhat to improve this situation.

Proportional rates out of grain markets have for many years been a fertile and prolific field of litigation before this commission, and this is likely to be the situation so long as the rate-break system is continued. In the report which has been adopted an earnest effort has been made to adjust the proportionals properly, but that is a very difficult undertaking, and I do not find the results altogether satisfactory. And if the markets are actually confined to rate breaks in the manner proposed and are not allowed transit on any through rates, I doubt whether they will find the results altogether satisfactory. On the whole I find myself impelled to the conclusion that it would be well to abolish the rate-break system entirely and confine the markets to operations on transit. Such a step should be accompanied by the adoption of stringent transit regulations and by a limitation upon the circuity of the routes over which the through rates are applied. Such rates as I would like to see adopted ought not to be applied over routes having a circuity in excess of 25 per cent, although of course this limitation should not be too rigidly followed. In the matter of transit regulations there should at least be a daily cancellation of inbound billing, and doubtless there are other reforms which are desirable. The scale which I have sug-

gested, moreover, is so designed that there would not be a great variation in traffic balances if unduly circuitous routes were not used.

In my judgment the markets could operate on such a rate plan, and all would have opportunities consistent with their geographical locations. It is precisely such a plan as minor markets like Des Moines, Wichita, and Grand Forks will find it necessary to operate under if the findings in the report which we have adopted are carried into effect. It might be necessary for certain lines to publish out of certain of the markets a system of varying proportional rates, unless we are given the adequate authority which we do not now have over the establishment of through routes and joint rates, but this would simply be a means of paralleling transit balances in effect over other lines. It might also be necessary to give consideration in another proceeding to markets which are gateways into the East and the South, for domestic rates to points in those territories are not here in issue.

I have already indicated that, so far as the farmer is concerned, I believe that the securing of the best possible price for his grain depends more upon the proper organization and cooperation of the farmers themselves than upon the "pulls" of supposedly competitive markets.

Such a system of rates as I have outlined above would, I believe, eliminate much of the waste which is now characteristic of the transportation of grain and grain products in many parts of the western district, with the result that the carriers would perform this service more economically and efficiently. It would also enable the producers to ship grain to market at the lowest lawful rates without paying for service which they do not seek or receive. The effect upon the carriers' net earnings would, I believe, be less severe than in the case of the rates required by the report which we have adopted. I doubt whether the latter rates sufficiently allow for the burden caused by "free" transit and the carriage of grain products at the same rates with grain.

LEWIS, *Commissioner*, concurring:

I qualifiedly concur in the decision reached as the result of this investigation, not because I consider that it represents the best way to dispose of the problem before us, but because the record clearly shows that a readjustment of the grain-rate structure in the territory west of the Mississippi River is necessary; that there are inequalities demanding correction; that too much of the burden of transportation is laid on wheat; and that certain reductions are justified. Though

the average reduction is much less, a survey of specific-point rates reveals cuts of 20, 30, 40, 50, or even 60 per cent in the present rates. Some of the carriers are not at this time in a position to stand such reductions. For that reason I favor somewhat less drastic reductions in domestic rates. At the same time I favor lower export rates under certain transportation limitations. In a concurring expression the argument against such export rates is presented. It is that if we "make rates as low as we can lawfully prescribe, on what basis of law and equity can we compel the carriers to apply still lower rates?" The answer is obvious. We can not, unless we find or create different and less expensive transportation conditions. That is what I have proposed to do by limiting "free" transit on export grain to not more than one, and to require heavier loading, as the carriers required last year as a condition of the emergency export rates. Such requirements change transportation conditions and reduce costs. The result would be that grain and its products would move in less expensive service, earning lower rates. At the same time the carriers would earn more than on the rates, services, and minima herein dictated by domestic movement. I shall demonstrate this in some detail in the text which follows.

It will be made obvious that I do not propose to raise domestic rates to cause, as suggested in the concurring expression, "producers of 600,000,000 bushels to subsidize the producers of 200,000,000 bushels." Rather, I do not favor making the rates on 200,000,000 bushels higher than they should be because domestic millers, markets, and handlers want and get expensive services on the 600,000,000 bushels that the export grain and its products do not require.

Facing the fact that it is not primarily our function to regulate trade and economic conditions, nevertheless Congress, our principal, places on us the duty of devising rate structures under which commodities will move as freely as possible, the country will properly develop, an adequate system of transportation may be maintained, and the carriers may earn as nearly as may be a fair return. This is sound public policy. I am of the opinion that the decision herein reached does not attain these objectives.

This Nation is a surplus producer of grain, particularly wheat. We produce about 800,000,000 bushels a year. Declining domestic consumption is now about 600,000,000 bushels. If surplus 200,000,000 bushels moves out of the country freely there is a relatively stable domestic market. But if the surplus piles up the market breaks, prices tumble, and our general business conditions fall under the blight of the lessened purchasing power of the agricultural sections. A year ago, when the 1929 crop came on, it encountered a carry-over accumulation of approximately 250,000,000 bushels from previous

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years. Again, this year a new crop of probably somewhat more than 800,000,000 bushels pours in upon the country, in whose storage capacity there still remains approximately a 275,000,000-bushel carry-over. The visible supply is, therefore, in round figures, over a billion bushels. Under such circumstances the recent crash in grain prices was inevitable. This unfortunate situation will probably continue until production and demand more nearly reach a balance.

Unless we are drastically to cut down our production we must promote exportation and provide an outlet for the surplus. In foreign markets we meet the competition of Canada, Australia, Argentina, and Europe. Most of these countries, because of relatively short rail hauls or for other reasons, can lay their grain down in foreign markets at very low cost.

Our carriers have extended—and we have not interfered—to manufacturers of iron and steel articles, automobiles, and farm machinery rates 25 per cent lower on export than on domestic shipments. If the same principle were here applied to wheat and its products it would have a vast beneficial result. I have favored, and still favor, export rates on wheat and its products 10 or 15 per cent lower than domestic rates, but would require, as a part of the tariff, that such rates be made subject to minimum weights 10 per cent higher in the case of grain, and 50 per cent higher in the case of flour, than apply on domestic movements; also provide that the rate include not more than one "free" transit. Under such an export-rate structure our grain producers would have lower transportation costs with which to meet competition of other nations in foreign markets. Because of more efficient utilization of equipment and less cost of delivery the carriers would receive more per car-mile and per ton-mile for transporting the grain. One illustration will suffice. The prescribed rate between Wichita, Kans., and the ports of Houston and Galveston is 33 cents. The distance is 648 miles. A carload of wheat weighing 80,000 pounds will earn $264. The same car loaded 88,000 pounds and subject to a 10 per cent lower rate would earn nearly the same revenue, while if it moved at a 15 per cent lower rate it would earn $246.84. This is over 38 cents per car-mile. The average yield per car-mile for all traffic is less than 30 cents for a much shorter haul.

Taking flour moving between the same points: On a domestic shipment, at a minimum loading of 40,000 pounds, the earning per car would be $132. Flour can load 60,000 pounds and more, and can so move for export. At a 10 per cent lower rate than domestic, a car weighing 60,000 pounds would earn $178.20, and at a 15 per cent lower rate than domestic it would earn $168.30, or $36.20 more than flour moving at the domestic minimum. Including all sizes of cars, the average loading of flour in 1928 was 48,580 pounds in the South-

western region. Under a 33-cent rate the earning would be $158.40 on a 48,000-pound loading, or $9.90 less than a car moving under a 15 per cent lower rate carrying an export minimum of 60,000 pounds. That it is entirely practicable to apply such car-capacity minima is evidenced by the fact that the export rates in effect last year were subject to minima of 110 per cent of the marked capacity on wheat and 80,000 pounds on flour.

In my opinion the higher minima alone would justify low export rates. There are, however, other elements favorable to export movement worthy of important consideration. The report provides for two transits without charge; the prescribed rates cover and include them. Estimates used in argument are that a transit costs about $22. The record shows that much export grain moves direct to the ports without transit, and on such there would be the saving of the cost of two transits to the carrier or $44. Under my proposal the maximum of transit included would be one, and here the saving would be approximately 9 per cent on wheat and 13 per cent on flour in the Wichita-Galveston case. The $22 cost figure may be too great. Reduce it by 40 per cent, or to a flat figure either 1 or 2 cents a 100 pounds, and still there is a saving in cost of rendering the service. There is an undetermined lesser cost per ton in moving heavy loads than lighter loads in box cars. This has not yet been quite satisfactorily reduced to dollars and cents. However, it is material. There is a still further economy in costs in export movements as compared with domestic movements.

The domestic rates cover nation-wide distribution, much of the grain and its products moving in single cars or in lots of a few cars. Delivery includes placement on individual sidings or industrial tracks at numerous destinations. On the other hand, grain and flour for export move to a limited number of ports, generally in multiple car lots and often in trainloads, and a much greater proportion of the export haul is on main lines with greater density and lesser costs than is true of domestic traffic. Again these lesser costs of rendering service can not be reduced to definable percentages or dollars and cents calculations. However, again, they are material.

Taking all the above transportation facts into consideration and entirely leaving out economic considerations, it seems to me that export rates 15 per cent lower than domestic rates are justified and conservative. They are less than the carriers have extended to certain manufacturers. The effort made by the carriers last year to reduce surplus grain by putting into effect temporary emergency export rates offers no acceptable test of effectiveness of export rates as a part of the rate structure. Those emergency rates were put into effect late and under conditions, such as world-wide publicity, that

were not favorable. The advantage of export rates is acknowledged by carriers and manufacturing industries which have built up large outlets for our products in foreign lands. There is a further justification in the fact that export rates are similar to proportional rates. They apply only to a portion of the through movement. We have always recognized the propriety of proportional rates lower than local rates, not only where there is an additional rail haul, but also to port for transshipment beyond. For example, we made a rate of $2.39 on coal moving from the Inner Crescent of Kentucky to Toledo for domestic delivery and a rate of $1.81 on the same coal when for movement by boat over the Great Lakes to points beyond.

In failing to make export rates lower than domestic rates we disregard another factor which we generally recognize; that is, the value of service. Export grain is often of inferior grade or can not be sold for domestic use. This is rather generally true of the grain exported through the Gulf and Atlantic ports. It is not true of the Montana wheat when exported through north Pacific ports. That wheat, however, has to compete in foreign markets with similar high-grade Canadian wheat moving to Vancouver for export. Northwestern exporters have testified that they will have to withdraw from competition for foreign trade if their export rates, which apply to over 90 per cent of the grain moving from Montana to north Pacific ports are taken away from them. Previously we have declined to permit cancellation of these export rates.

Throughout the entire report there is prominent the consideration of competitive conditions between millers, markets, and ports. In some instances recognition of such competitive conditions has been carried further than probably is warranted on transportation grounds. Considered from the standpoint of the grain producers, the carriers, and the country as a whole, it is vastly more important to recognize the great competition between rival grain-producing nations in keenly competitive foreign markets, which the decision fails to do.

I am extremely doubtful that the heavy reductions made in domestic rates will be of benefit to producers. They will not fail to have serious effect upon certain of the weaker carriers. All carriers, and particularly the western carriers, are now experiencing their part of a world-wide readjustment. Volume of traffic and earnings are falling. The carriers are reducing operating expenses. In doing so they are discharging employees and cutting down their purchases of supplies, equipment, and materials. Heavy reductions in grain rates at this time probably will require still further retrenchment, and directly and indirectly these things adversely affect the purchasing power of probably millions of the grain producers' con-

sumers. The effect will be to decrease, rather than to increase, consumption of grain in this country.

The home market is the best market the American grain grower has. His concern can not lie so much in the few cents a bushel that we may be able to clip off his transportation costs as in the restoration of conditions which give him a seller's market, or a return to profitable prices. Exporting the surplus, he must look to the home market for a return of higher prices. It is short-sighted policy to contribute to a debility in and of that market.

The best argument that is made in behalf of the decision herein is that it creates more equitable rate structure which will lend itself to horizontal adjustments up or down. This carries to me intimation that the level herein prescribed is probably too low to be permanent. Stability in rates is one of the highly desirable things to be sought in this or any other adjustment. I have only given expression herein on export rates. I disagree with some of the decisions on some of the details.

I am authorized to say that COMMISSIONER TATE concurs in that part of the foregoing which expresses the opinion that there should be a lower export rate because of different transportation conditions.

WOODLOCK, *Commissioner*, concurring in part:

Certain important features of the instant report enable me to concur in it to a partial extent.

In the first place (and this I consider a very definite merit) the report is essentially pragmatic in character in that it has sought to adjust the rate structure to the established customs, practices, and needs of the industry rather than to create a completely new structure and require the industry to adjust itself thereto. Were we starting with an absolutely clean slate or could we safely disregard the past, logic would no doubt direct us to a different course with respect to many matters herein contained. There is, for example, no warrant other than established custom for a uniform rate on grain and its products any more than there is for the inclusion of "transit" in the line-haul rates. It is, however, manifestly in the public interest to avoid causing violent changes in long-established customs unless there is a compelling necessity so to do.

In the second place, the elimination of transit balances at the important markets is a notable improvement of the existing situation in that it will tend to diminish the marketing costs of the producers' grain.

In the third place, having in mind the present price relation of the various grains and the extremely low level of the rates here prescribed, it is proper that coarse grain should take no lower rates than does wheat.

Lastly, the rates here prescribed will remove most of the many and gross discriminations which have long existed between various localities in the grain-producing territory, and this I regard as a reform of great importance.

My main difficulty with the report is the level of the rates prescribed. They are, in my judgment, far too low. They will involve a reduction of at least $15,000,000 in the revenues of carriers in the western district—perhaps more—and that loss will fall most heavily upon carriers in the Southwest and in the Pacific Northwest which will derive no benefit whatever from our revision of western trunk-line class rates. That revision, indeed, will probably bring about some reduction of class rates in a portion of the southwestern territory. This is a very serious matter when it is remembered that in these districts there are offered but few opportunities for recoupment of this revenue loss from other sources of traffic. The showing made by the western carriers, and particularly the carriers in western trunk-line territory, is impressive in this respect. If the rates herein prescribed are to remain long in effect in this territory, I can not but feel that they will produce a situation which will require emergency remedies if we are to maintain in that territory "an adequate system of transportation." I have little or no confidence in many of the so-called cost studies which seem to justify the rates here prescribed. But for the other advantages of the report and but for one fact with respect to the new rate structure that structure would, in my opinion, constitute a fatal defect which would prevent me from even a partial concurrence in the report as a whole. But one advantage of the structure herein prescribed is that it will be susceptible of horizontal change without much risk of such change producing new and widespread discriminations so that its rectification when such rectification shall be shown to be necessary should not be a matter of great difficulty. I assume that we shall be ready and prompt to rectify the structure if it shall prove, as I fear it will, to be too low.

It is obvious that such intrastate rates as at present are lower than the new interstate level should be brought into line with the new interstate rates herein prescribed. The record in this case brings into strong relief the extent to which some of the Western States have contrived to maintain through many years internal rate structures which are equivalent to a system of "protective tariffs" against neighboring States, and this sort of thing is repugnant to the fundamentals of our governmental system. There is here no question of "State rights," and section 13 (5) should rigidly apply. With interstate rates as low as those herein prescribed and with carrier finances in their present condition any discrimination on the part of intrastate

rates against interstate rates is surely undue and unreasonable and therefore unlawful.

BRAINERD, *Commissioner*, concurring:

I favor a prescription of export rates to the Gulf and north Pacific ports lower than domestic rates, the same as at present awarded the north Atlantic ports; a reasonable differential between the rates on wheat and the rates on coarse grains; and a lesser reduction in the proportional rates and a greater reduction in the rates from country stations to the markets in order to bring about a more equitable division between all concerned of the through rates, however computed or prescribed.

Nevertheless I have concurred in this report chiefly for the reason stated by some of my colleagues, that the decision is a progressive step in rate regulation and the best that can be done at present under all the facts and circumstances.

PORTER, *Commissioner*, concurring in part:

The conclusions of the majority in this case presents another striking illustration of the willful wobbling that is far too characteristic of our decisions in recent days, and which, if persisted in, will tend irresistibly to lower the high regard in which this commission has been held uniformly heretofore by shippers and carriers alike. Commencing with *In the Matter of Alleged Excessive Freight Rates and Charges on Food Products*, 4 I. C. C. 48, this commission held that "wheat and flour should bear the same rate, which should not be more than 15 per cent above the rates on corn and oats. Rates on all grains other than wheat should pay the same rates as corn." That case, establishing a differential between coarse grains and wheat, was followed in principle in a long line of decisions, among which are the following:

In *Aberdeen Commercial Asso.* v. *M. & O. R. Co.*, 10 I. C. C. 289, it was held that corn and oats should uniformly be 2 cents under wheat.

In *Roswell Commercial Club* v. *A., T. & S. F. Ry. Co.*, 12 I. C. C. 339, the corn rate prescribed was 5 cents less than the wheat rate.

In *Ter. of Okla.* v. *C., R. I. & Pac. Ry. Co. et al.*, 12 I. C. C. 367, a differential was prescribed on corn 2 to 3 cents under wheat.

In *Traffic Bureau, etc.*, v. *Mo. Pac. Ry. Co. et al.*, 13 I. C. C. 11, the commission prescribed 11 cents on coarse grains and 13 cents on wheat.

In *Investigation of Advances in Rates on Grain*, 21 I. C. C. 22, 39, from stations east of the Missouri River in South Dakota to Omaha, the commission prescribed the maximum grain rates, corn uniformly 1.5 cents under wheat.

In *Board of Trade of City of Chicago* v. *C. & A. R. R. Co.*, 27 I. C. C. 530, the proportional rate on wheat from Minneapolis and Duluth to Chicago was 10 cents, and it was sought to declare that rate unreasonable and unjustly discriminatory because the rate of 7.5 cents obtained on coarse grains between the same points. The commission considered it, wrote a lengthy opinion, and found that there was no violation of sections 2 and 3 of the act, and found no unjust discrimination by reason of the difference in the rates on the wheat and coarse grains.

In *Sioux City Terminal Elevator Co.* v. *C., M. & St. P. Ry. Co.*, 31 I. C. C. 482, the commission found that the record afforded no satisfactory means of determining what the relationship should be between wheat and the coarse grains, and assumed that the existing relationship at the producing stations was proper, and required the defendants for the future not to exceed as maximum the present spread between their rates on wheat and coarse grains.

In *Farmers, etc., Club* v. *A. T. & S. F. Ry. Co. et al.*, 12 I. C. C. 351, 362, it was held that the differential of 3 cents, corn under wheat for export, should be maintained from Wichita to Galveston.

In *Southwestern Missouri Millers Club* v. *M., K. & T. Ry. Co.*, 22 I. C. C. 422, 428, it was held that rates on corn and corn products from Joplin territory ought not to exceed 27.5 cents, which was 3 cents lower than the rate prescribed for wheat between the same points.

In *Grain Shippers' Asso.* v. *Illinois Central R. Co.*, 8 I. C. C. 158, it was held that the relation of rates between wheat and corn should be that wheat should not exceed by more than 4 cents the rate on corn.

In the *1915 Western Rate Advance Case*, 35 I. C. C. 497, on page 567, it is said by the commission that except in the Northwest, where comparatively little coarse grain is raised, coarse grains usually take lower rates than wheat.

It will be observed that while the differential varied in amount from 2 cents to 15 cents, depending upon the territory involved, there did exist differentials in some amount between the rate on wheat and flour, on the one hand, and coarse grains, on the other, and such differentials prevailed until the World War.

During the war the Director General of Railroads, by an order effective June 25, 1918, increased the wheat rates 25 per cent, with a maximum of 6 cents per 100 pounds, and directed that the rates on coarse grains should be the same as the increased wheat rates. Following the rate increase in Ex parte 74 a complaint was filed attacking this order of the director general, and the commission, by division 2, in *National Council Farmers' Assos.* v. *Director General*, 56

I. C. C. 399, upheld the rates theretofore established by the director general, and thus for the first time held that wheat and coarse grains might move on the same rates. It is important to note that division 2 there had before it only the rates applied during Federal control, and that it did not *require* any changes in the coarse-grain relationship to wheat, but simply left the relationship as it resulted under the director general's efforts to meet certain increased revenue needs in the Federal operation of the railroads of the country.

This, however, was not suffered for long, and in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C. 85, between points in the western and Mountain-Pacific groups, the entire commission, upon an extensive record, found "that the present rates on coarse grains will be for the future unjust and unreasonable to the extent that they may exceed 10 per cent less than those herein prescribed as just and reasonable on wheat from and to the same points." Petition for rehearing was filed and on July 5, 1922, this cause was reopened for further hearing on the question of the relationship of the rates on wheat and other grain and products thereof between points in the western group and between points in the western group and points in the Mountain-Pacific group. The case was fully argued, and on June 4, 1923, in 80 I. C. C. 362, the commission reaffirmed its original finding as to the western rate group, the greatest coarse-grain producing area in this country, or the world, but vacated the part of the finding prescribing a relationship in maximum rates between wheat and coarse grains within the Mountain-Pacific group. Since that decision the carriers have voluntarily published rates on coarse grains 10 per cent less than those on wheat from the various groups to California common points, the Pacific Northwest, Montana common points, Ogden, and Salt Lake City, thus placing the Mountain-Pacific group with respect to coarse grains generally on the same basis as elsewhere in western territory, and that basis has since been maintained and is in effect to-day.

In the instant proceeding we have the most comprehensive investigation which this commission has ever conducted. It extended over many months, and we have a record comprising more than 60,000 typewritten pages and, in addition, thousands of exhibits. In it all not one witness came forward to offer any testimony even suggesting that there had been a change in conditions since our last determination. No question was raised as to the justice of the present relationship as it has existed for eight years. In three solid weeks of oral argument on the final submission of this case not a single voice was raised advocating or requesting that a change be made. But with unanimous acquiescence by the parties in the present 10 per cent differential relationship throughout this entire pro-

ceeding, a majority of this commission, upon their own initiative, without hint or suggestion from anyone, but drawing only upon their own self-conceived notion of what is desirable, here decree that henceforth coarse grain shall move upon the same rates as wheat and flour. They thereby overturn a practice which was voluntarily established by the carriers as early as 1869 and has continued since 1890 upon our order, with the exception of the brief period during and immediately following the war. Against this action of the majority I register my most vigorous protest.

The aforementioned is a part of the fundamental error which pervades the action of the majority in this proceeding. The utter disregard of the just claims of the coarse-grain farmers to relief by reduced freight rates, as compared with the substantial reduction in rates generally accorded the wheat farmer, is striking. The majority are placing all the emphasis upon the producer of wheat and paying little attention to the producer of coarse grains. They ignore the fact that in the portion of the country here under immediate consideration, being that part west of the Mississippi River, including all of Minnesota and also Wisconsin, over a 10-year period, there has been produced annually an average of 1,426,577,800 bushels of corn, 784,370,000 bushels of oats, and 42,602,000 bushels of rye, or 2,253,549,800 bushels of coarse grains, as compared with an average annual production of only 596,785,000 bushels of wheat. Iowa, the heart of the Corn Belt, alone produces annually more coarse grains than the entire production of wheat in this territory. It produces 420,104,000 bushels of corn, 223,000,000 bushels of oats, and 760,000 bushels of rye, a total average annual production of 643,864,000 bushels. The Iowa farmer is here handed a bouquet in the nature of an increase in freight rates on coarse grains to Chicago, his principal primary market, averaging about 10 per cent. The coarse-grain farmer of Missouri, Minnesota, and Wisconsin, the very center of the great corn area of this country, is likewise handed substantial increases in rates to his principal primary markets. Nebraska is the only State in this area producing a considerable amount of coarse grain that is accorded any substantial reduction in coarse-grain rates.

It may be suggested, in answer to this discrimination against the corn producer as compared with the wheat producer, that substantially all of the wheat grown, or the products thereof, moves out of the county in which it is produced over the rails of the carriers to some distant market, while the larger portion of coarse grains is consumed as feed for livestock in the county in which it is produced. While it is undoubtedly true that the carrier is more directly interested in the wheat rate because that commodity moves more exten-

sively, it must be borne in mind that the portion of the coarse grains which actually moves to the primary market fixes the price of that portion which is sold and consumed in the local market. The local purchaser invariably pays to the local producer the first primary-market price, less the freight rate to the primary market. To illustrate the discriminations against the coarse-grain grower, let me instance a few examples.

From Hawarden, Iowa, to Chicago the wheat rate is reduced 1.5 cents, but the rate on coarse grains is increased 1 cent. From Chareton, Iowa, to Chicago the wheat rate is reduced 1 cent and the rate on coarse grains increased 1 cent. From Rock Rapids, Iowa, to Chicago the wheat rate is reduced 0.5 cent and the rate on coarse grains increased 2 cents. From Wisconsin to Chicago the wheat rate from Antigo is reduced 0.5 cent and the coarse-grain rate increased 1.5 cents; from Appleton the wheat rate is reduced 1 cent and the rate on coarse grains increased 0.5 cent; from Marshfield and LaCrosse the wheat rate is reduced 0.5 cent and the coarse-grain rate increased 1.5 cents. From Minnesota to Chicago the wheat rate from Willmar is reduced 2 cents and the coarse-grain rate increased 0.5 cent; from Marshall the coarse-grain rate is increased 1 cent and the wheat rate reduced 1.5 cents; from Faribault the increase on coarse grains is 1 cent, the same as the reduction on wheat. From Missouri to Chicago the wheat farmer will find his rates left generally undisturbed and in some instances slightly increased, while the coarse-grain farmer will find his rates increased, for example, by 3 cents from Chillicothe and St. Charles, 4.5 cents from Columbia, and 5 cents from Martinsburg and Wellsville. This is affording the coarse-grain farmer relief with a vengeance.

The above are typical illustrations of the effect which the findings of the majority will have on the coarse-grain farmer in the four States named. The distressed condition of agriculture, quite fully described in an appendix to this report, unquestionably applies with as much force to the farmer who is producing coarse grains as to the farmer who is engaged in producing wheat exclusively. This proceeding is an outgrowth of the Hoch-Smith resolution, and surely Congress when it passed that resolution admonishing the commission to afford all possible relief to the farmer meant the coarse-grain farmer just as much as it meant the wheat farmer. In view of the material reductions which will follow in the rates on wheat as a result of this report, I see no good reason why the farmers who annually produce 2 billion bushels of coarse grains should be treated in so different a manner. That different treatment is brought about largely by the unwarranted action of the majority in ordering that henceforth coarse grain shall be carried at the same rates as apply to wheat, when it has been carried for so many years on a basis 10

per cent below wheat. While I am in accord with the relief which is here granted to the wheat producer, I feel very earnestly that the findings of the majority fail to accord to the coarse-grain producer that just consideration to which the interstate commerce act and the record in this proceeding entitle him.

The most shocking picture of wanton wastefulness in transportation is presented on this record in connection with the so-called free transit. Back hauls of from 50 to 500 miles are common. Devious meanderings of several hundred per cent in circuity, are frequent, during which two to a dozen transits are accorded and are accepted as a matter of course. The low proportional rates out of the primary markets are mere paper rates, for little if any grain moves under them. It moves on the balance of the through rate far below any such rates. By the use of the mixing and unit rules it frequently moves out of the large market hundreds of miles for nothing. For illustration, you originate a shipment of molasses at New Orleans and ship it to Kansas City. At that point it is mixed with bran, shorts, and middlings and the ingredients necessary to a balanced feed. Then you surrender the molasses inbound billing and send the mixed shipment to Chicago at the balance of the molasses rate, which is the same from New Orleans to Chicago as to Kansas City. This means that the mixed shipment is hauled 400 miles from Kansas City to Chicago for nothing. The pity of it all is that the carriers either condone or openly endeavor to defend these inexcusable practices.

The majority have gone far to improve this situation, but not far enough. All transit should be paid for by the person for whom the service is rendered and not included, as at present, in the line-haul rate. Free transit is of no value to the producer, as practically all of it takes place after the shipment has reached the first market. It is used by the middlemen, between the producer and the ultimate consumer. Under the present theory, the cost of transit is hidden supposedly in the line-haul rate, and the person who does not use it and cares nothing about it must pay for it as much as the person who uses it 10 or more times.

It is admitted upon this record that it costs the carrier about $20 per car each time the service is rendered. It is a service of value to the person who requires it. Why should not he who uses it pay for it? This is the rule generally adopted in every other case of transit save grain. It is a sound principle economically, and undoubtedly the present practice in grain would not exist but for the inability of traffic officials to withstand the competitive pressure.

We would not be without sound precedent if we established a universal charge on all transit sufficient to cover the actual cost plus a reasonable profit to the carrier. In a case determined in 1912, *In Re*

Transportation of Wool, Hides, and Pelts, 23 I. C. C. 151, the commission, speaking through CHAIRMAN PROUTY, after describing transit as a practice of universal prevalence, and affirming that as railroad business is now conducted, the commission could not properly supervise and regulate interstate rates and practices without authority over transit, said:

> For the granting of this privilege carriers should, however, charge a reasonable compensation. It has been the custom of railroads in many cases to give, as a part of the rate, special privileges of this kind, which were sometimes availed of and sometimes not, and it often happens that the rate itself is justified upon the ground that these privileges are allowed. Proper rate making secures to every shipper the performance of the transportation service for no more than a reasonable charge and requires of every shipper the payment for every service performed of what is reasonable.

This principle was again forcibly stated in *Mercantile Lumber Co. v. I. C. R. R. Co.*, 53 I. C. C. 663, wherein division 2 had under consideration a charge of 2 cents per 100 pounds for transit on lumber, and took occasion to say:

> Transit involves a service rendered to those making use of it, and the cost should be borne by them instead of by the shipping public generally. There can be no question but that defendants may exact a reasonable charge for the extra service they perform where a shipper takes advantage of the transit arrangement. It is a thing of value to the shipper and of expense to the carrier.

After all, transit is a special service very much akin to that rendered by the carriers in ordinary switching service. Within very recent times this commission, particularly division 3, has on numerous occasions considered the question of charging for switching services, and in a recent case, *Reciprocal Switching Charges*, 155 I. C. C. 450, that division said:

> Protestants' witness stated that the charges for reciprocal switching are generally established without regard to the cost for the particular service on the theory that the services are of mutual advantage to all of the carriers concerned and will be performed by all at correspondingly low charges. The fact that such charges are or are not reciprocal is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by us in several cases. *Switching at Galesburg, Ill.*, 31 I. C. C. 294; *Switching and Absorption at Minneapolis*, 61 I. C. C. 646; *Interchange Switching at Atlanta*, 63 I. C. C. 258. Charges for switching should be sufficient to insure a proper return for the service performed.

The Supreme Court of the United States has been called upon to consider the principle herein involved in a number of cases. It will not be necessary to burden this report with more than one or two of the many. In *Southern Ry. Co. v. St. Louis Hay and Grain Co.*, 214 U. S. 301, the court said:

> If the stopping for inspection and reloading is of some benefit to the shipper and involves some service, but an expense to the railway company, we do not

think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto.

See also *Missouri Pac. Ry. Co.* v. *State of Nebraska*, 217 U. S. 196, 206.

In fact, it may be stated as a just principle, well established by the courts, that any service rendered by a carrier should be charged for at a sum sufficient to remunerate the carrier for the service performed, and the service should not be allowed by reason of no charge, or an insufficient charge, to become a burden on other traffic. *Northern Pac. Ry. Co.* v. *North Dakota*, 236 U. S. 585, and *Norfolk & West. Ry.* v. *W. Va.*, 236 U. S. 605.

The foregoing are my major objections to the findings of the majority. There are others of a minor character, which I will not prolong this concurrence to discuss. If a report in any case of magnitude is to be adopted, there must be a yielding of individual views and mutual concessions. Believing that as to many important matters with which this proceeding is concerned it will bring about a distinct improvement in present conditions, I concur generally in the report.

I am authorized to say that COMMISSIONER TATE joins in that part of my concurring expression which deals only with the subject of transit.

LEE, *Commissioner*, concurring:

Although concurring in the adoption of the report, I disagree with a number of its features. Among these, I agree with COMMISSIONER MEYER'S views on port equalization, and with COMMISSIONER LEWIS on the subject of export rates.

AITCHISON, *Commissioner*, dissenting in part:

While concurring generally in the report, for the reasons stated by COMMISSIONER PORTER I do not concur in the removal of the differential between coarse and other grains where now existing.

Nor am I able to concur in the very summary treatment accorded complaints which seek reparation. The consideration given to them in the report is utterly inadequate. Persons who bring complaints under section 13 of the act are entitled to full and careful consideration by the commission, and to a report of the facts according to usual practice. This right should not be diminished because for convenience we force a consolidation of the complaints of individuals with a nation-wide general investigation which looks only to the future. In this case there is no discussion or weighing of the evidence as bearing upon these particular complaints—in fact, there is not even an enumeration of the complaints which seek reparation as to

which, presumably, orders of dismissal are to be entered. The least which we should do under such circumstances is to reserve these complaints for further and adequate consideration as to the reasonableness of the rates charged in the past, and not dispose of them in a manner which, while possibly a short cut for the commission, ignores the substantial rights of the parties and denies one of the elements of a hearing, due consideration of specific issues involved.

APPENDIX A

COMPLAINT AND INVESTIGATION AND SUSPENSION PROCEEDINGS CONSOLIDATED WITH PART 7, DOCKET 17000

Some of the cases listed below were consolidated with this record for initial or further hearing. Others were separately heard and submitted. All are finally disposed of in this proceeding.

No. 16112, *Ogden Grain Exchange* v. *Abilene & Southern Railway Company et al.* Complainant alleged that the rates on grain and grain products from points in Utah and Idaho to destinations in Colorado, the lower Mississippi Valley, and other points within the scope of this proceeding, were unreasonable and unduly prejudicial, in violation of sections 1, 3, and 4 of the interstate commerce act. In our report and order therein, 122 I. C. C. 691, we prescribed, among others, reduced rates from Colorado common points to the Southwest and made the rates from Utah and Idaho fixed differentials higher than from Colorado common points. Our further order of June 24, 1927, therein postponed the effective date of the reduced base rates from Colorado common points, but made no change in the findings as to the differentials, and consolidated the case with this proceeding, for further consideration.

No. 16141, *State of Idaho ex rel. Public Utilities Commission of Idaho* v. *Oregon Short Line Railroad Company et al.* Complainant alleges that the rates charged on wheat, in carloads, shipped from producing points in Idaho, served by defendants' lines, to Portland, Oreg., for export, have been and are unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe just and equitable rates for the future not to exceed the rates for equal distances on the same commodity charged by other common carriers on such traffic to Portland.

No. 16294, *State of Colorado et al.* v. *Missouri Pacific Railroad Company et al.* Complainant alleges that the rates on grain and grain products, in carloads, from Denver and Colorado common points and Greeley, Colo., and points grouped therewith, to Galveston and Houston, Tex., and New Orleans, La., are unreasonable and, in comparison with the rates from Nebraska, Minnesota, and Iowa, unduly prejudicial. Complainants ask that defendants be required to establish and put in force, on the commodities and between the points heretofore described, rates and charges which the commission may [illegible] just and reasonable.

No. 16322, *Nebraska State Railway Commission* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of corn, in carloads, from points in Nebraska to Superior, Nebr., to destinations on the lines of the Atchison, Topeka & Santa Fe Railway Company and Missouri Pacific Railroad Company in Kansas and Oklahoma are unreasonable, in violation of section 1 of the interstate commerce act, in that they are combinations of local rates to and from Superior instead of reasonable joint through rates. The commission is asked to prescribe reasonable joint through rates for the future. The complaint was heard and a proposed report served, but subsequently the case was consolidated with this proceeding.

No. 16501, *Sioux City Grain Exchange* v. *Ahnapee & Western Railway Company et al.*, and Sub-No. 1, *Board of Trade of Kansas City, Mo.* v. *Same.* Complainants allege that the rates on grain and grain products, in carloads, from points in Nebraska, Minnesota, South Dakota, and Iowa to Sioux City, Iowa, and Kansas City, Mo.-Kans., are unreasonable, and, as compared with rates from the same points to Minneapolis, Minn., Chicago, Ill., and other primary grain markets, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future.

No. 16612, *Superior Traffic Association* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the through rates, made by combination on Superior, charged on grain and its products, in carloads, from points on defendants' lines in Nebraska to Kansas and Oklahoma are unreasonable, and, as compared with combinations on Lincoln, Nebr., and the Missouri River cities, between the same points, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future. This case was heard separately and a proposed report was served, but was subsequently consolidated with this proceeding.

No. 17159, and related cases, *Southern Kansas Grain & Grain Products Association* v. *Chicago, Rock Island & Pacific Railway Company.* This case was reopened for further argument in connection with this proceeding. In our original report therein, 139 I. C. C. 641, we limited the application of transit rules and proportional rates at lower Missouri River crossings, and St. Louis, Mo., and points grouped therewith, on wheat and its products originating in southern Kansas and Colorado, reshipped to interior points in Arkansas, Louisiana, and Texas, and to Gulf ports for export.

No. 17477, *St. Joseph Grain Exchange et al* v. *Abilene & Southern Railway Company et al.* Complainants allege that, in respect of grain and grain products, the rates from Minneapolis, Minn., to St. Joseph, Mo., Atchison, Kans., and Kansas City, Mo.-Kans., are unreasonable and, in comparison with the rates from Minneapolis to St. Louis, Mo., and Cairo, Ill., unduly prejudicial; that the rates from St. Joseph, Atchison, and Kansas City to destinations in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas, in comparison with the rates from Minneapolis to the same destinations, are unduly prejudicial; that on shipments from Minnesota and States north and west of Minnesota, from which no joint rates are published, to various destinations, the combinations on St. Joseph, Atchison, and Kansas City are higher than the combinations on Minneapolis, to the undue prejudice of St. Joseph, Atchison, and Kansas City, and the undue preference of Minneapolis; and that the rates from Minneapolis to destinations in Arkansas, Louisiana, and Missouri when applied through St. Joseph, Atchison, and Kansas City are unduly prejudicial to those points in comparison with lower rates applied through St. Louis and Cairo with transit; all in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to establish reasonable and nonprejudicial rates for the future.

No. 17992, *Southern Kansas Millers Traffic Club et al.* v. *Abilene & Southern Railway Company et al.* Complainants allege that the rates charged for the transportation of wheat and coarse grain, and products thereof, in carloads, when shipped direct or under transit arrangements en route, from points in southern Kansas to destinations in Texas are unjust, unreasonable, and, in comparison with the rates contemporaneously maintained on like traffic from

Oklahoma, established in compliance with our order in Docket No. 12244, *Oklahoma Corporation Commission* v. *A. & S. Ry. Co.*, 101 I. C. C. 116, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 17992 (Sub-No. 1), *Salina Chamber of Commerce et al.* v. *Abilene & Southern Railway Company et al.* Complainants allege that the rates charged for the transportation of wheat and coarse grains, and products thereof, in carloads, when shipped direct or under transit arrangements en route, from points in Kansas to destinations in Texas, are unjust, unreasonable, and, in comparison with rates contemporaneously maintained on like traffic from Oklahoma, established in compliance with our order in Docket No. 12244, *Oklahoma Corporation Commission* v. *A. & S. Ry. Co.*, 101 I. C. C. 116, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 18203, *American Maid Flour Mills et al.* v. *Abilene & Southern Railway Company et al.* Complainants allege that rates charged for the transportation of grain and grain products, in carloads, from points in Texas and Oklahoma, via routes through Texas, to destinations in Arkansas and Louisiana are unreasonable, and, in comparison with rates from competing points in Oklahoma, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable joint through rates for the future, subject to transit arrangements at points in Texas.

No. 18359, *Atchison Board of Trade et al.* v. *Abilene & Southern Railway Company et al.* Complainants allege that the local, proportional, and joint through rates charged for the transportation of grain and grain products, in carloads, from points in Kansas, Missouri, Nebraska, South Dakota, Minnesota, and Iowa, to all destinations in Texas are unreasonable, and, in comparison with rates from competing points in Oklahoma, Kansas, and Texas, and with rates on Texas intrastate shipments, unduly prejudicial, in violation of sections 1, 3, and 13 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 18359 (Sub-No. 1), *Sioux City Grain Exchange* v. *Abilene & Southern Railway Company et al.* Complainant alleges that the local, proportional, and joint through rates charged for the transportation of grain and grain products, in carloads, from Sioux City and other points in Iowa, and from points in Kansas, Missouri, Nebraska, Minnesota, and South Dakota to points in Texas are unreasonable and, by comparison with rates from competing points in Oklahoma, Kansas, and Texas, and with rates on Texas intrastate shipments, unduly prejudicial, in violation of sections 1, 3, and 13 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 18616, *Minneapolis Traffic Association* v. *Chicago, Milwaukee & St. Paul Railway Company (H. E. Byram, Mark W. Potter, and Edward J. Brundage, Receivers)*. Complainant alleges that the failure of defendant to maintain rules and regulations providing for transit at Minneapolis, Minn., on grain and grain products, in carloads, shipped from points on defendant's lines in Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, and Iowa to Minneapolis, there milled and reshipped to Duluth, Minn., or Superior, Wis., subjects complainant's members to the payment of rates which are unreasonable and, by comparison with the transit rules and regulations accorded com-

peting shippers and millers at other points, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates and transit rules for the future. Hearing was had, a proposed report issued, and the case was orally argued, but final action was withheld for consideration in connection with this proceeding.

No. 18629, *Southwestern Millers' League* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of flour, in carloads, from points in Kansas, Nebraska, Oklahoma, Texas, and Colorado, to destinations in California are unreasonable, and, by comparison with the contemporaneous rates on wheat, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future.

No. 18629 (Sub-No. 1), *Globe Grain and Milling Company* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of grain and grain products from points in Colorado, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas to points in Arizona, California, Nevada, and Utah are unjust, unreasonable, and, by comparison with rates from points in Colorado, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. Complainant asks that the defendants be required to increase the differential between wheat and flour rates, and to establish reasonable and nonprejudicial rates for the future.

No. 18782, *New Orleans Joint Traffic Bureau* v. *Abilene & Southern Railway Company et al.* Complainant alleges that the rates charged for the transportation of grain and grain products, in carloads, from points in Colorado, Idaho, Kansas, Missouri, Nebraska, Nevada, Oklahoma, Oregon, Utah, and Wyoming to New Orleans, La., and points within the terminal district of New Orleans, are unreasonable and by comparison with the adjustments accorded at St. Louis, Mo., East St. Louis, Cairo, and Chicago, Ill., Memphis, Tenn., and points in the States of Arkansas, Illinois, Kentucky, Mississippi, Missouri, Louisiana, Tennessee, and Texas, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 18860, *Des Moines Elevator & Grain Company et al.* v. *Chicago, Burlington & Quincy Railroad Company et al.* Complainants allege that the rates charged for the transportation of grain, grain products, and related articles taking the same rates, in carloads, from Des Moines, Iowa, to destinations on the Chicago, Burlington & Quincy Railroad and the Quincy, Omaha & Kansas City Railroad, were and are unreasonable and, by comparison with rates from Council Bluffs, Iowa, and Omaha, Nebr., unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 18900, *Des Moines Board of Trade et al.* v. *Kansas City, Clay County and St. Joseph Railway Company et al.* Complainants allege that the rates charged for the transportation of grain and grain products, in carloads, between Des Moines, Iowa, and St. Joseph, Mo., Atchison, and Leavenworth, Kans., Kansas City, Mo.-Kans., and points in North and South Dakota, are unreasonable, and that the adjustment at Des Moines, by comparison with the adjustment at various western competing points, is unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable local and proportional rates for the future.

No. 19103, *Merchants Exchange of St. Louis* v. *Abilene & Southern Railway Company et al.* Complainant alleges that the rates charged for the transportation of grain and seed, in carloads, from points in the Panhandle of Texas and points in New Mexico to St. Louis, Mo., and East St. Louis, Ill, are unreasonable and, by comparison with rates from competing points in Missouri, Louisiana, and Tennessee, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future.

No. 19283, *Taylor Milling Company et al.* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainants allege that the failure and refusal of defendants to accord transit to complainants on shipments of grain, grain products, seeds, and other commodities used in the manufacture of poultry and stock foods, moving from Los Angeles, Calif., to points in Arizona, Nevada, New Mexico, Oregon, and other States, while contemporaneously according such transit to competitors in Colorado, Nebraska, Kansas, Missouri, Oklahoma, Texas, and other States, are unduly prejudicial to complainants and unduly prefer their competitors, in violation of section 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial transit rules for the future.

No. 19279, *Board of Trade of Cairo, Ill.*, v. *Arkansas & Louisiana Missouri Railway Company et al.* Complainant alleges that the rates charged for the transportation of grain and grain products, in carloads, from points in Illinois to points in Louisiana are unreasonable and, by comparison with rates from points in Iowa, Minnesota, South Dakota, North Dakota, Nebraska, Kansas, and Colorado, and from Kansas City, Mo.-Kans., Omaha, Nebr., Des Moines, Iowa, and other markets, as well as from certain points in Illinois, including Cairo, unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial rates for the future.

No. 19453, *Lucius P. Cook et al.* v. *Chicago, Rock Island & Pacific Railway Company et al.* Complainants allege that the rates charged for the transportation of grain and grain products from points in Colorado, Missouri, and Kansas to Memphis, Tenn., when destined to Nashville, Tenn., and directly intermediate stations on the lines of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis railways, and the failure of defendants to accord transit at Memphis, are unreasonable and, by comparison with the adjustment accorded complainants' competitors at St. Louis, Mo., and Cairo and East St. Louis, Ill., unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates to and transit rules at Memphis.

No. 19620, *Board of Railroad Commissioners of the State of Iowa* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of coarse grain from Iowa to the north Pacific coast are unreasonable and unjustly discriminatory, in violation of sections 1 and 2 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future.

No. 19749, *Light Grain & Milling Company* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of wheat and coarse grains and the products thereof from points in Kansas and Oklahoma to various points in New Mexico are unreasonable and unduly prejudicial, in violation of section 1, and the long-and-short-haul clause of section 4, of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation, including

reparation on shipments moving during the pendency of this proceeding. The parties agreed to submit this case upon the record in this proceeding, with a reservation as to reparation.

No. 19842, *State of North Dakota, Doing Business as The North Dakota Mill and Elevator Association, et al.* v. *Ahnapee & Western Railway Company et al.* Complainants allege that the rates charged for the transportation of grain from points in Montana and North Dakota to the North Dakota Terminal at Grand Forks, N. Dak., there cleaned and milled in transit and reshipped to Chicago, Ill., New York, N. Y., and other eastern destinations, are unreasonable and, by comparison with the adjustment at grain terminals at Minneapolis and Duluth, Minn., Buffalo, N. Y., and other points, unduly prejudicial; that the exaction of a charge for transit at the North Dakota Terminal while according free transit at Great Lakes terminals is unreasonable and unduly prejudicial; that the rates on wheat and coarse grains from points in Montana to the North Dakota Terminal are unreasonable and, by comparison with the rates to Minneapolis, St. Paul, Duluth, and other points, unduly prejudicial; all in violation of sections 1, 2, 3, and 4 of the interstate commerce act. The commission is asked to prescribe reasonable and nonprejudicial through rates and transit rules for the future.

No. 20071, *Delmar Company et al.* v. *Chicago, Milwaukee & St. Paul Railway Company (H. E. Byram, Mark W. Potter, and Edward J. Brundage, Receivers).* Complainants allege that the charges collected for the storage in transit at Minneapolis, Minn., of grain forwarded from and to various interstate destinations on the lines of defendant were and are unreasonable, in violation of section 1 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation. This case was assigned for hearing, but upon agreement of the parties was submitted upon the record as made in No. 18616, which was consolidated with this proceeding.

No. 20115, *Oklahoma City Mill & Elevator Company et al.* v. *St. Louis-San Francisco Railway Company et al.* Complainants allege that the rates charged for the transportation of grain and grain products, in carloads, from points in Oklahoma to destinations on the line of the Missouri & North Arkansas Railway Company are unreasonable, in violation of section 1 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation.

No. 20293, *Texas Wheat Growers Association* v. *Southern Pacific Company et al.* Complainant alleges that the rates charged for the transportation of grain and grain products, in carloads, from stations on the line of the Southern Pacific Company, Bascom to Dawson, N. Mex., inclusive, to stations in the State of Texas, are unreasonable and, by comparison with the rates on the same commodities from Kansas City, Mo., unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation. This case was assigned for hearing, but upon agreement of the parties was submitted upon the record in this proceeding.

No. 20474, *Fisher Flouring Mills Company et al.* v. *Union Pacific Railroad Company et al.* Complainant alleges that the rates charged for the transportation of grain, in carloads, from points in southern Idaho on the Union Pacific and the Oregon Short Line Railways to Seattle, Wash., are unreasonable and, by comparison with rates from the same origins to Portland, Oreg., unduly prejudicial, in violation of sections 1, 2, and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation.

No. 21079, *Albers Milling Company* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charges for the transportation of cereals and cereal products, in carloads, from Oakland, Calif., and other California points to various destinations in Utah, Wyoming, Idaho, and Montana are unreasonable, in violation of section 1 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation. At the hearing complainant waived its claim for reparation.

No. 21108, *Texas Wheat Growers Association* v. *Atchison, Topeka & Santa Fe Railway Company et al.* Complainant alleges that the rates charged for the transportation of grain and grain products, in carloads, from various points of origin on the line of the Panhandle & Santa Fe Railway in Texas to Galveston, Tex., are unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. The commission is asked to prescribe reasonable rates for the future and to award reparation, including reparation on shipments moving during the pendency of this proceeding. The parties agreed to submit the issue as to rates upon this record, but reserved the issue as to reparation for later determination.

In I. and S. No. 2469, and related cases, there were proposals to materially revise rates on grain and grain products from, to, and between points in Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, and in the report therein, *Grain and Grain Products*, 122 I. C. C. 235, the issues were reserved for disposition in this proceeding.

I. and S. Docket No. 2735, *Transit Provisions on Grain and Related Articles Destined to Duluth, Minn., and Related Points*, proposes changes in the provisions for transit on grain and grain products, in carloads, from points in Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, and Iowa to Duluth, Minn., and related points. The schedules were suspended by order of August 21, 1926, and voluntarily postponed further by the carriers. The case was consolidated with No. 18616, hearing was had, and a proposed report prepared.

I. and S. Docket No. 2956, *Grain Products Between Points in Western Trunk-Line Territory*, proposes increased rates on grain products between points in western trunk-line territory.

I. and S. Docket No. 3046, *Grain from Montana to Duluth, Minn., and Superior, Wis.*, proposes changes in rates on grain from points on the Northern Pacific Railway in Montana to Duluth, Minn., and Superior, Wis., via Minneapolis, Minn. Protestants object to the alleged proposed assessment on cars forwarded from Minneapolis to Duluth, in the original car and on the original waybill, of a charge additional to that for reconsignment or diversion. The schedules carrying the increased rates were suspended by order of January 10, 1928, and voluntarily postponed further by the carriers.

I. and S. Docket No. 3089, *Proportional Rates on Grain and Grain Products from Omaha and Group to Duluth and Points Taking Same Rates*, proposes changes in proportional rates on grain and grain products from Omaha, Nebr., and points taking the same rates, to Duluth, Minn., and points grouped therewith. Protestants allege, among other things, that the maintenance of the same rates from Omaha and other Missouri River points to Duluth and Chicago, Ill., permits the Minneapolis market to compete on an equal basis with Chicago, Kansas City, and other points, and that the proposed changes will lessen this opportunity. The proposed schedules were suspended by order of April 4, 1928, and the case was submitted without hearing on the record in this proceeding.

I and S. No. 3278, *Grain and Related Articles Between Points in Kansas, Missouri, and Arkansas*, proposes changes in rates on grain and related arti-

cies between points in Kansas, Missouri, and Arkansas. The schedules were suspended by order of April 13, 1929, and voluntarily further postponed by the carriers. A scheduled hearing was canceled upon agreement of the parties to submit the case upon this record.

In I. and S. No. 3293, *Transit Provisions on Grain and Related Articles Destined to Duluth, Minn., and Related Points*, the Minneapolis Traffic Association protests changes in rules and regulations governing transit on grain and grain products, in carloads, at points on respondent's lines, when destined to Duluth, Minn., and related points. The proposed schedules were suspended by order of May 16, 1929.

APPENDIX B

List of Commodities Taking Grain-Products Rates

Barley
Barley, cracked
Barley, flaked
Barley, pearled
Barley, roasted
Barley, rolled
Barley-oats mixture
Beans:
- Castor
- Mesquite
- Soy or soya
- Velvet

Bran:
- Corn
- Rice
- Wheat

Buckwheat
Burrs, cotton boll
Cake:
- Copra
- Cottonseed
- Oil
- Palm kernel
- Peanut
- Sesame seed
- Soya bean
- Sunflower seed
- Velvet bean

Cereal food preparations, not otherwise indexed by name in current western classification (cracked, ground, granulated, hulled or rolled cereals for human consumption, cooked or uncooked)
Cerealine
Chaff, barley
Chops:
- Barley
- Corn
- Feterita
- Kaffir corn
- Milo maize
- Oat
- Sorghum head or sorghum grain chops, made from sorghum grain in the head
- Wheat

Clippings, oat
Corn
Corn, cracked
Corn, crushed
Corn, ground
Corncobs, ground
Cowpeas
Durra (Jerusalem corn)
Dust:
- Grain
- Elevator

Emmer
Farina
Farinose
Feed:
- Alalfa
- Animal, poultry, or pigeon, prepared (not condimental nor medicated)
- Barley, ground
- Barley-hay feed
- Bean-straw feed
- Buckwheat (bran and middlings
- Clover or sorghum
- Corn, ground

LIST OF COMMODITIES TAKING GRAIN-PRODUCTS RATES—Continued

Feed—Continued.
Gluten
Gluten meal
Grain, not otherwise indexed by name in current western classification
Hominy
Oat
Rye, ground
Straw by-product
Wheat, ground
Yucca, ground
Feterita
Flakes:
Brewers'
Corn
Cottonseed hull
Hominy
Oat
Flaxseed
Flour:
Buckwheat
Corn
Malt
Mixed grain
Rye
Sorghum
Spelt or spelz
Flour manufactured from beans, potatoes, or wheat; or flour manufactured from a mixture of any two or more of such articles; or flour manufactured from any one or more of such articles with one or more of the following articles:
Barley, feterita, kaffir corn, milo maize or oats, grain flour not otherwise indexed by name, or blends of grain flours with cereal flours, not including fruit or vegetable flour
Flour manufactured from barley, feterita, kaffir corn, milo maize, or oats, or flour manufactured from a mixture of any two or more of such articles
Germs, corn
Grain, brewers' (by-products of barley)
Grain, brewers' dried
Grain, sorghum (milo maize, kaffir corn, hegari or higera, dorso or feterita, shalla)
Grain, spent (dried or wet)
Grits (grain or cereal)
Grits, brewers' (including brewers' refined grits)
Groats, oat
Hominy
Hominy, pearl
Hulls:
Barley
Buckwheat
Corn
Cottonseed, ground or unground
Cotton boll
Oat
Peanut, ground,
Rice
Kaffir corn
Kaoliang
Maizea
Malt
Malt, flaked
Mazaun
Meal:
Alfalfa
Barley
Bean straw
Bran
Brewers
Cactus, ground
Copra
Corn
Corn cob
Corn germ
Corn oil cake
Cottonseed
Feterita
Gluten
Hominy
Kaffir corn
Linseed
Mesquite
Milo maize
Oat
Oil cake
Palm kernel
Peanut

LIST OF COMMODITIES TAKING GRAIN-PRODUCTS RATES—Continued

Meal—Continued.
Rice, mixture of rice bran and rice polish
Sesame seed
Sorghum
Sorghum pulp
Soya bean
Sugar beet
Sunflower seed
Velvet bean
Middlings
Millstuffs
Milo maize
Needles, barley
Offal, oat
Oats
Oats, cracked
Oats, ground
Oats, mill (containing more than 30 per cent of wheat)
Oats and barley blended
Pulp, dried beet
Pummies, ground or unground
Refuse, brewers'
Refuse, flour or mill
Refuse, malters'
Rice polish
Rye
Rye, cracked
Rye, crushed
Rye, rolled
Screenings:
Bean
Grain
Screenings—Continued.
Paddy rice
Pea
Skimmings, barley or grain (malt house)
Skimmings, rye
Seed:
Broomcorn
Cane
Flax
Hemp
Hungarian
Melilotus
Millet
Sorghum
Sudan grass
Sunflower
Vetch
Wild mustard
Shipstuffs
Shorts
Spelt or spelz
Sprouts:
Barley
Rye
Malt
Wheat, whole
Wheat, cracked
Wheat, crushed
Wheat, flaked
Wheat, granulated
Wheat, pearl
Wheat, rolled

APPENDIX C

SUMMARY OF EVIDENCE RELATING TO THE ECONOMIC CONDITION OF THE GRAIN FARMER

The record in this case contains a comprehensive discussion of the economic condition of the producers of grain in western territory. Some 140 economic witnesses were heard, besides many who testified on grain rates and related subjects. In an effort to shorten the time required for taking this testimony, we invited, through proper State or Federal authorities, other witnesses capable of giving us the benefit of their special knowledge of agricultural conditions. Fourteen such additional witnesses appeared.

In the following pages appears a digest, under appropriate heads, of pertinent parts of this economic testimony, together with interpretations of its significance. Some of the statistics to be examined do not bear directly on the issues in this case, but presumably were presented to throw light on the general agricultural situation.

It has been deemed desirable in some instances to supplement the record by adding to Government statistical series, put in at the hearings, data for subsequent periods which have since become available. These have been taken from the same Government sources and in no case extend beyond the time of the closing of the hearings.

GENERAL DESCRIPTION OF THE GRAIN-GROWING INDUSTRY

The relative importance of the several leading grains, measured by volume of production and shipment, is indicated in the table below.

Five leading grains, production and shipments out of county where grown, average 1922–1926

	Production	Shipments	Per cent shipped
Wheat:	*Bushels*	*Bushels*	
24 western States	651, 894, 000	481, 582, 000	73. 9
United States	807, 648, 000	554, 512, 000	68. 7
Corn:			
24 western States	1, 822, 542, 000	396, 680, 000	21. 8
United States	2, 766, 197, 000	510, 133, 000	18. 4
Oats:			
24 western States	1, 051, 942, 000	279, 214, 000	26. 5
United States	1, 353, 101, 000	338, 164, 000	25. 0
Barley:			
24 western States	180, 530, 000	66, 082, 000	36. 6
United States	193, 814, 000	66, 769, 000	34. 5
Rye:			
24 western States	39, 917, 000	25, 278, 000	63. 3
United States	53, 756, 000	28, 815, 000	53. 6

There are well-defined areas in the production of wheat in western territory. The spring-wheat area embraces, in the order of the importance of their 1927 acreage, North Dakota, Montana, South Dakota, and Minnesota, with Washington, Idaho, and other States of less importance. Included in the spring-wheat area is that devoted to durum wheat, in whose production North Dakota leads, followed at a great distance by South Dakota and Minnesota. Kansas leads in hard winter-wheat acreage and is followed by Oklahoma, Nebraska, Texas, Colorado, Washington, and Oregon. Soft winter wheat is produced extensively in Illinois and Missouri, of the States of the western district.

Wheat acreage has shown a tendency to expand in recent years, particularly in parts of Montana, North Dakota, Nebraska, Colorado, Kansas, Oklahoma, and Texas. The States in which increases have occurred are those in which newer methods of production, particularly the combine and the tractor, have recently come into use, making it possible in some cases to use for crop purposes lands which had hitherto been devoted to livestock production.

Corn production is concentrated largely in the so-called Corn Belt, where Iowa leads, followed by Nebraska, Illinois, Missouri, Kansas, South Dakota, and Minnesota. Texas and Oklahoma, in the Southwest, are also large producers of corn.

The acreage of oats in 1927 was greatest in Iowa, followed by Minnesota, Illinois, South Dakota, Nebraska, Wisconsin, and Texas.

In the case of barley, North Dakota leads, followed by Minnesota and South Dakota, and then, at some distance, by such States as Wisconsin, Illinois, Iowa, Kansas, and Colorado. On the Pacific coast California is a large producer.

North Dakota is the only State with a large acreage of rye. Also of some importance in rye production are Minnesota, Nebraska, and Wisconsin.

RETURN FROM FARMING OPERATIONS

Testimony as to the return earned by agriculture relates (1) to the gross return from farming operations as a whole, from crops alone, or from a particular kind of crop; (2) to the net return, variously stated, from farming operations as a whole; and (3) to comparisons of production costs and selling prices per acre or per bushel.

Gross income from farm production has been estimated as shown below in the years for which information is available. This figure is derived by deducting from gross value of all farm production those portions of crops and dairy products fed to livestock or used for seed, and waste. Income includes the value of food and fuel consumed on the farm, which has varied since 1920 from 20 to 23 per cent of the total, but it does not include depreciation or appreciation in inventories of capital investment or of farm products.

1919-20	$15,719,000,000	1924-25	$12,003,000,000
1920-21	12,668,000,000	1925-26	12,670,000,000
1921-22	9,214,000,000	1926-27	12,127,000,000
1922-23	10,366,000,000	1927-28	12,253,000,000
1923-24	11,288,000,000		

These figures, which were introduced by several witnesses, cover the entire United States and include branches of agriculture which are not in issue in this case. Barring the decline of 4.3 per cent from 1925–1926 to 1926–1927, agricultural income as a whole has shown slow but substantial improvement over the lowest year, 1921–1922, though all subsequent years have fallen below the first or a year of high prices.

A means of comparing farm returns for a longer period of years than that shown above is found in the statistics of value of farm production. These are available for the calendar years 1909 to 1926 and can be summarized as follows:

Period	Value of crops not fed to livestock	Value of animal products	Total
1909-1913	160.0	160.0	160.0
1914-1920	188.0	169.9	178.7
1921-1923	155.7	157.8	156.7
1924-1926	174.6	179.2	176.9

It will be seen that the value of crops in 1924–1926 had attained 93 per cent of the 1914–1920 value and that of livestock, had gone 5.4 per cent above the 1914–1920 average.

Turning now to the grains alone, the gross income from them has been as follows in the years indicated:

1919-20	$3,005,000,000	1924-25	$1,842,000,000
1920-21	2,246,000,000	1925-26	1,594,000,000
1921-22	1,266,000,000	1926-27	1,455,000,000
1922-23	1,393,000,000	1927-28	1,636,000,000
1923-24	1,393,000,000		

The drop in income from grains as a whole after 1920 is clearly marked. Improvement set in in 1922–23 and continued throughout 1924–25, since when there have been two successive declines and then a partial recovery. The 1927–1928 income is 29 per cent above that of 1921–1922 but 27 per cent below that of 1920–1921 and 46 per cent below that of 1919–1920. Again the showing is for the entire United States and comparable pre-war data are not available. Climatic and other factors affecting crops have had much to do with the results, and changes in acreage must be considered.

To approach more closely to the major issues in this case, the following data relating to gross return from wheat alone have been computed from information of record. These relate to the particular States in which wheat represented, on the average of the years 1921–1925, 10 per cent or more of the farm sales. For Kansas and Oklahoma data are not of record for the year 1927–1928. Changes in income are here related to changes in acreage. Acreage figures are acreage harvested; allowance must be made for the effects of climatic factors. The years from 1909 to 1928 have been grouped into a base period of five years, a war and immediate post-war period of six years, and two periods of four years each thereafter.

Index of wheat income and wheat acreage (1909–10 to 1913–14=100)

State	Average, 1909–10 to 1913–14	Average, 1914–15 to 1919–20	Average, 1920–21 to 1923–24	Average, 1924–25 to 1927–28
North Dakota:				
Income	100.0	168.1	137.4	200.6
Acreage	100.0	95.9	114.2	115.9
Montana:				
Income	100.0	320.2	419.0	629.7
Acreage	100.0	360.4	571.7	638.1
Washington:				
Income	100.0	154.9	156.2	133.7
Acreage	100.0	90.2	112.6	93.1
Idaho:				
Income	100.0	288.8	310.0	313.8
Acreage	100.0	162.7	228.3	207.5
South Dakota:				
Income	100.0	219.9	100.3	118.4
Acreage	100.0	98.1	80.7	67.4
Oregon:				
Income	100.0	198.2	219.1	186.4
Acreage	100.0	119.1	149.8	127.2
Nebraska:				
Income	100.0	262.3	165.2	164.9
Acreage	100.0	113.7	126.3	105.5
Colorado:				
Income	100.0	289.1	200.0	285.9
Acreage	100.0	191.9	367.0	330.7
Kansas:				
Income	100.0	280.2	238.6	[1] 269.3
Acreage	100.0	143.1	169.4	[1] 170.4
Oklahoma:				
Income	100.0	462.6	368.3	[1] 469.1
Acreage	100.0	294.6	242.3	[1] 260.3
United States:				
Income	100.0	227.6	164.5	174.2
Acreage	100.0	[2] 122.5	131.0	116.7

[1] Average, 1924–25 to 1926–27.

[2] In peak year, 1919–20, 160.7.

In all of the States except Montana, income from wheat increased in considerably greater measure than acreage in the period from 1914 to 1920. In three of the States acreage harvested declined while income advanced. In Montana, acreage ncresed 260.4 per cent and income 220.2. For the United States as a whole, acreage increased 22.5 per cent and income 127.6 per cent.

In the next period of four years acreage increased in each of the States except South Dakota, and income also increased, though not proportionately, in Montana, Idaho, and Oregon and to a minor extent in Washington. In the remaining States income declined, and in the United States as a whole a 6.9 per cent increase in acreage was accompanied by a decline of 27.7 per cent in income. Comparing this with the pre-war period, it will be noted that in every State except Montana and Colorado income showed a relatively greater increase than acreage.

Acreage generally tended to decline in the last 4-year period, the only exceptions being Montana and Oklahoma, and to a minor extent North Dakota and Kansas. The period differs here from that covered in an earlier reference to recent increase of acreage. For the country as a whole, acreage declined 10.9 per cent and income increased 5.9 per cent. Declines in income in Washington and Oregon largely offset the noticeable increases in States such as North Dakota, Montana, Oklahoma, and Colorado.

Summarizing, it may be said that wheat production yielded in the period from 1914 to 1920 exceptionally high gross returns, that acreage continued to expand in the period following while income declined, and that in the final period acreage declined 11 per cent while income advanced 6 per cent. In the 1920–1924 period, 25.6 per cent more income was obtained from each acre than in the pre-war period; in the final period, 49.3 per cent more. The latter figure is, however, an average of 69.6 per cent in the exceptional year 1924–25, and of 50, 41.1, and 39 per cent in the years following.

No account has yet been taken of the increase in costs, other than acreage costs, compared with the pre-war period. Some importance should also attach to the fact that when prices rise the poorer grades of land are called into use and that these are the lands first to go out of use when prices fall.

The next step in showing the earnings of agriculture is the derivation of net return from gross income. The calculations of the United States Department of Agriculture are most commonly cited. The following percentage return is found on the current value of all capital invested in agriculture and of the operator's net investment:

Year	Return on total capital investment	Return on net capital investment [1]	Year	Return on total capital investment	Return on net capital investment [1]
1919–20	6.3	5.7	1924–25	4.4	3.2
1920–21	.5	−4.2	1925–26	5.2	4.3
1921–22	1.2	−2.3	1926–27	4.3	2.9
1922–23	3.2	1.2	1927–28	4.6	3.4
1923–24	3.5	1.6			

[1] Total capital investment less property rented from nonoperators and debts owed to nonoperators.

These calculations require considerable explanation. Net income represents what remains of gross income after payment for hired labor and purchased feeds, seeds, and fertilizers, after the deduction of a calculated cost of the annual use of machinery and equipment, and an allowance at current wage rates for the work of the farmer and his family. Credit is not made for the use of the farm dwelling and, it is urged by some, the inclusion of food produced and consumed on the farm at farm prices understates the farmer's return in relation to that of the city dweller. The calculations as a whole rest in considerable part on estimates; hence their value is principally in what they may reveal as to trends of earnings.

The decline after 1919–1920 was of a severe character, but there has been substantial recovery from the low point of 1920–1921. The falling off in 1926–1927 was partly made up in the year following. It is to be remembered, of course, that these returns are computed on a declining value of farm investment. The decline in the period covered in the value of all farm capital was 26.5 per cent and in operator's net investment, 31.6 per cent. Witnesses responsible for the calculation were not able to state to what extent the reduction in values was real and to what extent fictitious. In so far as agricultural property values were increased by inflation not accompanied by change of ownership the return on investment in the first year shown is considerably understated and similarly, but in less degree, in the years immediately following. In view of the stability of land values shown in the last five years, the return then earned may be said to be on approximately a deflated basis. It has ranged from 2.9 to 4.3 per cent on the operator's net investment, a return after allowance for all operating expenses, including depreciation and a wage return for the farmer and his family, interest paid others, taxes, etc. The consumption of food and fuel on the farm has been taken into account but not the annual value of the use of the farm dwelling.

These calculations relate to agriculture as a whole and cover all parts of the country. Comparison in this form with pre-war returns is not possible from the record. One witness, speaking of Nebraska, generalized to the effect that, after allowing for wages and management, the farmer's net return never had been 5 per cent, except in 1919, when 6 per cent was earned. The return shown above for the high year 1919–1920 was 6.3 or 5.7 per cent, according to whether it is reckoned on the basis of total capital invested in agriculture or the operator's net investment. Capital investment was, however, considerably inflated at this time, resulting in an understatement of the rate of return actually earned by the majority of farmers. It is, moreover, a matter of general knowledge, and was also testified by some witnesses, that the farmer during the long period of rising land values before the war took a part of his return in the form of the increased value of his principal capital asset.

Net return is also stated in terms of income to the average farmer for labor and management. Deducting interest at 4.5 per cent (which may or may not be low according to what a "normal" return is) on the current value of the farmer's net capital investment, the following amounts remain as return for labor and management:

1919–20	$917	1924–25	$624
1920–21	397	1925–26	690
1921–22	270	1926–27	636
1922–23	440	1927–28	657
1923–24	533		

There appears to have been a stabilization in the last four years shown at a point roughly 30 per cent below that of 1919–20, the first year for which this information is obtainable. Allowing $60 per annum, a figure which is clearly too low, as the value of the use of the farm dwelling, the figure last shown above is 28 per cent below the first figure, similarly increased, while the wages of farm hands are 16 per cent below and of factory employees 2 per cent above. It is to be noted that wholesale prices in the calendar years 1925 to 1927 were approximately a third lower than in the calendar year 1920 and the weighted-average price of commodities purchased by the farmer for living and production, 24 per cent lower. On the other hand, there has been an increase in the efficiency of farm operations in the period reviewed. Variations in climatic conditions also must be taken into account.

The United States Department of Agriculture also makes a calculation of net return per farm in which cash items are segregated from others. The general trend revealed is similar to that indicated in the series referred to above. Based on special returns to the department (for some 13,475 farms in all parts of the country in 1926), these calculations, on examination in detail, serve to indicate how important are size of farm and efficiency of operation in the determination of the return earned. The return on capital for capital and management in the case of these farms may be shown for sections of the country in issue in this proceeding:

Year	West north central	South central	Western	United States
1922	2.8	5.0	1.6	3.0
1923	1.7	3.8	2.5	2.3
1924	3.4	6.4	3.5	4.0
1925	4.0	4.4	5.9	4.6
1926	2.8	6.0	4.8	3.9

Calculations generally similar in character to those of the Federal department were put in as representative of the conditions in a number of States. Discussion of only one of these is possible here. This relates to the nine northwestern counties of Oklahoma, more than half the area of which is stated to be devoted to wheat production. After the deduction of 4.5 per cent on the deflated value of farm properties, the labor return per farm was obtained, of which the following unweighted averages are useful summaries:

Average 1915–1920	$903	Average 1921–1923	824
Average 1918–1920	1,058	Average 1924–1927	643
Average 1921–1927	378		

Crop conditions have varied considerably in the period covered. No allowance is made for the use of the farm dwelling and certain assumptions and apportionment are possibly subject to question.

For these same counties there is given the return earned on farm investment, after allowing the farmer wages at current rates. An unweighted average shows that the return from 1915–1920 was 6.5 per cent and from 1921 to 1927, 2.8 per cent. From 1921–1924 it was 0.85 per cent and from 1925–1927, 5.37 per cent. An exceptional crop was enjoyed in 1926.

Numerous comparisons were made of the return earned by agriculture with that earned by railroads and industrial corporations. Such comparisons are inherently difficult to make and, in the present state of our knowledge of industrial earnings, are of little practical significance. The record may be said to indicate that agriculture has received a considerably smaller return in the years since the war than certain industries. It will not, however, support a conclusion as to how agricultural earnings compare with those of industries in general.

In this connection it is to be borne in mind that farming does not experience such a heavy percentage of failures as other lines of enterprise, such as manufacturing and retailing. Evidence of this can be found by observing the changes which occur among the retail establishments of a city block and comparing these with the number of failures in the same period for an equal number of farmers. A number of witnesses discussed these features. Statistically, the difference can be measured by comparing farm and other bankruptcies, allowing, however, for the fact that not all farm failures take the form of bankruptcy. On the average of the years 1910–1914, there were 8.2 failures per 1,000 business

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enterprises and approximately 0.136 per 1,000 farmers; in the years 1922–1926, 9.2 and 1.02, respectively.

The third class of testimony offered in proof of the earnings of agriculture consists of comparisons of production costs and receipts per acre or per bushel. Both shippers and carriers introduced testimony of this character.

The shortcomings of this type of evidence have been pointed out in earlier reports (83 I. C. C. 105, 111). Its inherent defects arise from the necessity of apportioning a large part of the expense items, particularly the farmer's time, between various operations, and of placing reasonable amounts against such noncash charges as feed produced on the farm and depreciation. The noncash items make up a considerable part of the aggregate of reported costs. Moreover, the method requires the use of an extremely small sample, since farmers generally do not and will not keep the necessary records. Sound generalization from the results thus achieved is therefore very difficult.

The cost studies of the United States Department of Agriculture, conducted in cooperation with State agencies, have the merit of being made on a uniform basis. The results for a few of the States most representative of the several classes of grain may be taken from this source.

Cost factors in amounts per acre

	Year	Net cost of production, including land rent	Receipts	Gain [1]	Land rent	Available for investment
Wheat:						
Kansas	1923	$15.69	$11.83	*$3.86*	$4.10	$0.24
Do	1924	16.79	21.76	4.97	4.39	9.36
Do	1925	15.37	16.28	0.91	4.13	5.04
North Dakota	1923	12.66	7.74	*4.92*	2.49	*−2.43*
Do	1924	14.37	20.16	5.79	2.62	8.41
Do	1925	15.05	18.34	3.29	2.80	6.09
Oklahoma	1923	13.53	10.80	*2.73*	3.13	0.40
Do	1924	15.58	19.38	3.80	3.37	7.17
Do	1925	13.90	14.60	.70	3.37	4.07
Montana	1923	17.48	13.12	*4.36*	3.33	*−1.03*
Do	1924	16.73	19.84	3.11	3.62	6.73
Do	1925	16.16	19.46	3.30	3.48	6.78
Washington	1923	27.06	22.64	*4.42*	9.08	4.66
Do	1924	26.17	23.55	*2.62*	10.63	8.01
Corn:						
Iowa	1923	24.09	28.52	4.43	8.57	13.00
Do	1924	24.87	39.99	15.12	8.71	23.83
Do	1925	26.18	21.28	*4.90*	8.97	4.07
Nebraska	1923	17.10	18.55	1.45	4.91	6.36
Do	1924	17.06	22.75	5.69	5.13	10.82
Do	1925	16.62	18.30	1.68	5.12	6.80
Minnesota	1923	22.18	23.79	1.61	4.88	6.49
Do	1924	22.49	24.65	2.16	5.27	7.43
Do	1925	23.55	21.28	*2.27*	5.14	2.87
South Dakota	1923	17.54	18.20	0.66	3.47	4.13
Do	1924	16.36	18.40	2.04	3.51	5.55
Do	1925	16.36	12.60	*3.76*	3.78	0.02
Oats:						
Iowa	1923	17.23	14.80	*2.43*	7.60	5.17
Do	1924	25.77	19.36	0.59	7.85	8.44
Do	1925	18.84	14.08	*4.76*	8.05	3.29
Minnesota	1923	17.14	13.94	*3.20*	4.63	1.43
Do	1924	18.26	19.78	1.52	5.05	6.57
Do	1925	17.73	14.57	*3.16*	4.75	1.59
South Dakota	1923	15.01	11.47	*3.54*	3.43	*−0.11*
Do	1924	14.37	15.20	0.83	3.52	4.35
Do	1925	14.76	10.08	*4.68*	3.72	*−0.96*
Nebraska	1923	14.90	12.24	*2.66*	4.84	2.18
Do	1924	16.12	13.76	*2.36*	5.26	2.90
Do	1925	14.73	10.08	*4.67*	5.13	0.46

[1] Italic figures indicate "loss."

The period covered in the foregoing table is a very limited one. Comparable figures are not available for the earlier post-war years, and those for subsequent years are incomplete. Later developments will be traced from the record by other indexes of agricultural conditions.

It should be recognized at the outset that the farms reporting these returns are above the average in both producing and marketing efficiency. On the other hand, the costs shown include all labor costs, those attributable to the farmer himself among them, and also a charge for the use of the land and its appurtenances reckoned on a cash-rental basis. A "gain" therefore would signify that, after being paid current wages for his time and receiving a designated return on his investment, the farmer has a surplus available for additional return on his property or for management; a "loss" would signify failure to remunerate fully either the farmer's labor or his investment or both.

In the case of wheat, 1923 was for all States of record, except New Mexico, one of losses in the sense indicated. However, in some of the States the value per acre sufficed to pay all operating costs and a partial return on the land. Thus the land rent in Washington is computed in that year at $9.08 an acre; deduction of this leaves other costs of $17.98, which are $4.66 less than the revenue received. In North Dakota and Montana, however, costs without the land return exceeded the reported receipts.

The year 1924 was a better one from the point of view of both production and price and in all the States of record except Washington and two minor wheat-producing States, yielded a return over both labor and land costs. In some instances the gain was very material. In 1925 the gains, in this special sense, were generally less than in 1924 but they were substantial.

The combined returns for Kansas, Missouri, and Nebraska show an increase from 1913 to 1926 of 22 per cent in the cost of producing an acre of wheat, exclusive of land rent, and an increase of 49 per cent in the acre value of wheat. Stated in bushels, the increases were 29 and 56 per cent, respectively. Farm-property values in these States increased 27 per cent from 1910 to 1925, the census years, which appears to signify that the margin remaining for return on investment was proportionately as great in these States in 1926 as it was in 1913. There was, however, a greater mortgage indebtedness against farm properties in the latter year.

The only other cost study of record which provides pre-war data is one introduced for Montana, of which the following is a summary:

	1908–1914	1921–1924	1925	1926
Cost per acre	$12.33	$16.32	$16.16	$16.73
Value of wheat per acre	$19.88	$14.21	$19.46	$14.58
Yield per acre (bushels)	24.80	14.10	14.00	15.00

The decline in yield per acre clearly is a large factor in the wheat situation of Montana.

Corn seems to have had good years in 1923 and 1924 and a poorer year in 1925. Oats yielded even in 1923 a return sufficient to cover operating costs and to leave in three of the four States named amounts ranging from $1.43 to $5.17 per acre applicable for land return and management, though in South Dakota the return failed by $0.11 per acre to cover the operating costs. The year 1924 was considerably better but 1925 was generally below 1923.

Numerous individual farmers testified along one or more of the three lines under which the return from farm operations is being considered. Testimony

of this character is difficult to appraise. It is not collected on a uniform basis; it depends on the keenness and accuracy of observation of the individual witness; it involves use of scattered samples of extremely small size whose representativeness is difficult to establish; and frequently in this case is based on operations as a whole, including livestock and field crops other than grain. In many respects there was a failure on the part of the contending parties to produce witnesses from the same sections. Special difficulties arise in interpreting the testimony of nearly every such witness.

In general, the experiences cited confirm the well-established fact that success in farming as in other lines, depends in great part on the individual. Some are able, through greater efficiency, larger command of capital, greater willingness to practice economies, etc., to cope with adverse forces more effectively than others. In some of the older wheat-producing areas diversification has brought better results than can be achieved when wheat has been emphasized. On the other hand, the extension of wheat production into new areas, especially in the Southwest, is attended by large risks owing to the variable climatic conditions. Wheat production here is highly speculative and is profitable, as an average of good and bad years proposition, only if land values have been or are kept within the limits set by average yields over a period of years. Throughout the entire western district climatic conditions appear to have been especially adverse during the post-war period. The older wheat regions of the Northwest and Pacific Northwest have particularly felt the effects of droughts. In the latter, summer fallowing and increased weeds, as shown by heavy dockage, have reduced the earning power of the land.

If it is possible to generalize on the basis of the individual experiences related of the record, it may be concluded that there has been general improvement in the western district as a whole over the conditions which immediately followed the collapse of grain prices. Where rapid expansion of wheat production has recently occurred or is now in process, there is evidence of belief in the profitableness of wheat. In the older regions conditions are somewhat less favorable, owing, among other things, to the financial burden which agriculture labors under and to the increasing competition of the newer wheat regions. A greater percentage of the farmers in the older regions probably are conducting their operations on a less satisfactory basis than before the war, though there has been distinct improvement over the worst conditions.

Tenants have been particularly troubled. Early losses, in some cases on livestock, reduced or wiped out their working capital and made it difficult for them to carry on satisfactorily or to any large extent acquire land even at prevailing prices.

Further phases of the return earned by agriculture are considered in connection with ensuing discussion of the changing purchasing power of the farmer's dollar.

PURCHASING POWER OF THE FARMER'S DOLLAR

The term "purchasing power" has been used in this proceeding with two distinct meanings. The first, emphasized by the shippers, represents a pure price comparison; the second, stressed by the carriers, brings in the number of dollars received as well as what a single dollar will buy. Each use of the term has merits for specific purposes, as well as limitations which must be clearly understood. The present section is devoted to purchasing power in the first sense.

Considerable difference of opinion developed as to the price series to be used in conjunction with agricultural prices. The carriers generally preferred

to use the wholesale prices of all commodities, while the shippers urged the use of either the wholesale prices of nonagricultural commodities or the new index of prices paid by the farmer prepared by the United States Department of Agriculture. The last commends itself as being closest to the facts in which we are interested and will be used in subsequent calculations. As finally offered for the record and as now generally available, this index does not embrace farm wages and taxes, but is limited to the retail prices of commodities purchased for living and production. The fact that it is available only on a national basis is perhaps a little more serious than would be the case if wholesale prices were used. This qualification must be held in mind when use is made of this index in conjunction with farm prices for individual States.

That the reader may, however, have before him all of the general indexes offered for the record, the following table is presented. It will be noted that the new index runs generally lower than either of the indexes of wholesale commodity prices. It therefore produces a higher purchasing power than the older indexes. The new index is, however, from 1 to 6 points higher than the all-commodities index for the years 1921, 1924, and 1926–1928. Strikingly divergent results are to be noted in the years 1917 and 1920.

Year	U. S. Department of Labor wholesale price index		U. S. Department of Agriculture		
	All commodities [1]	Nonagricultural commodities [1]	Prices paid by farmers for living and production [1]	Farm wages [1]	Taxes [1]
1910	103	102	98	97	
1911	95	96	101	97	
1912	101	100	100	101	
1913	102	105	100	104	
1914	100	97	101	101	100
1915	103	101	106	102	102
1916	129	138	123	112	104
1917	180	182	150	140	109
1918	198	188	178	176	118
1919	210	199	205	206	130
1920	230	241	206	239	153
1921	150	167	156	150	217
1922	152	168	152	146	232
1923	156	171	153	166	246
1924	152	162	154	166	246
1925	162	165	159	168	250
1926	154	161	156	171	251
1927	149	152	154	170	
1928:					
January	151	153	154	161	
February	151	151	154		
March	150	151	155		
April	152	151	156	166	
May	154	152	156		
June	153	152	157		
July	154		156	170	
August	155		156		
September	157		156		

[1] 1910–1914=100. [2] 1914=100.

The purchasing power of grains as a group and that of all groups of farm products for the years 1915 to September, 1928, obtained by use of the aforementioned new index of prices the farmer pays at retail follow:

Year	Purchasing power of grains [1]	Purchasing power of all agricultural commodities [1]	Year	Purchasing power of grains [1]	Purchasing power of all agricultural commodities [1]
1915	113	94	1927	83	85
1916	102	95	1928:		
1917	145	117	January	81	89
1918	127	112	February	83	88
1919	113	102	March	81	88
1920	112	100	April	92	90
1921	72	74	May	103	95
1922	69	82	June	97	92
1923	75	88	July	91	93
1924	84	87	August	77	89
1925	98	92	September	75	90
1926	83	87			

[1] On 5-year base, August 1909, to July, 1914.

It will be observed that both grains and all farm products achieved their maximum purchasing power in 1917 and that grains enjoyed a considerably greater advance in purchasing power from 1915 to 1920 than did farm commodities generally, while since 1920 their purchasing power has generally been below that of all farm products.

The purchasing power of the individual grains may next be traced for representative States and for the United States. The indexes of prices received (except those shown for the United States and for the last three months in the table) are weighted by the monthly marketings. These indexes are available for the crop years, while the retail-price index which is to be used in conjunction with them is on a calendar-year basis. No objection lies, however, against combining these indexes, since the costs met in producing the 1926–27 crop, for example, were incurred largely in the calendar year 1926, when also the greater part of the grain would be marketed.

Purchasing power of wheat, crops of 1915 to 1927, and July to September, 1928

Year	United States	Kansas	Nebraska	North Dakota	South Dakota	Montana	Oregon	Washington
1915–16	105	107	105	100	112	102	102	100
1916–17	136	140	143	135	124	154	121	132
1917–18	155	165	163	152	152	165	166	169
1918–19	131	132	138	132	131	139	145	143
1919–20	121	123	123	131	127	145	126	130
1920–21	100	96	94	96	86	99	119	123
1921–22	76	77	75	73	75	81	76	76
1922–23	73	73	74	67	67	75	80	81
1923–24	69	69	68	68	64	75	73	71
1924–25	94	90	94	95	94	102	103	101
1925–26	104	108	109	97	98	114	106	111
1926–27	90	90	92	92	92	98	97	96
1927–28	90	94	92	83	86	88	96	97
1928:								
July 15	85	83	87	83	85	88	98	95
Aug. 15	70	64	68	65	66	67	80	84
Sept. 15	69	66	69	62	65	65	80	83

In the United States and each of the States, wheat attained its maximum purchasing power in the year 1917–18, declined thereafter to 1923–24, attained its greatest post-war purchasing power in 1925–26, and in September, 1928, had in the various States from about two-thirds to four-fifths of its normal purchasing power.

Oklahoma is not included in the above table because comparable basic data are not of record. The purchasing power of Oklahoma wheat in terms of

wholesale nonagricultural commodities is, however, given by months for a term of years. In 1926 the range of purchasing power was from 111 in January to 84 in September, after which there was a rise to 90 in May, 1927, the last month given. There has been improvement over the years 1922 to 1924, when for the most part the purchasing power ranged from 56 to 75.

Purchasing power of corn, crops of 1915 to 1927, and July to September, 1928

Year	United States	Iowa	Nebraska	Minnesota	South Dakota	Kansas
1915–16	102	112	98	120	104	98
1916–17	151	147	140	149	141	130
1917–18	153	174	172	173	168	162
1918–19	133	146	147	137	138	144
1919–20	115	128	125	131	129	125
1920–21	47	59	47	51	51	44
1921–22	54	47	41	50	42	42
1922–23	79	71	67	75	64	67
1923–24	85	85	73	82	75	74
1924–25	107	124	115	119	115	103
1925–26	69	77	74	79	83	72
1926–27	74	76	82	78	80	76
1927–28	86	101	86	99	87	76
1928:						
July 15	102	113	101	117	105	91
Aug. 15	97	106	94	108	99	83
Sept. 15	94	106	97	104	99	83

Corn also achieved its maximum purchasing power in each of the States shown and in the country as a whole in 1917–18, declining thereafter to 1921–22, then rising to its highest postwar purchasing power in 1924–25. In September, 1928, corn had in the various States from 83 to 106 per cent of its normal purchasing power. Corn has achieved a more complete recovery than the other grains.

Purchasing power of oats, crops of 1915 to 1927, and July to September, 1928

Year	United States	Iowa	Minnesota	South Dakota	Nebraska
1915–16	92	96	91	84	89
1916–17	104	107	105	98	97
1917–18	119	126	122	117	116
1918–19	96	101	97	94	95
1919–20	98	99	97	94	98
1920–21	62	62	60	60	64
1921–22	53	47	46	41	43
1922–23	64	62	57	53	58
1923–24	70	67	63	58	63
1924–25	78	82	79	76	78
1925–26	61	62	57	54	60
1926–27	66	67	65	66	70
1927–28	80	84	80	72	78
1928:					
July 15	89	97	93	82	85
Aug. 15	61	57	59	51	58
Sept. 15	58	59	57	51	60

The story is similar in the case of oats. A maximum was reached in 1917–18, then ensued a decline to 1921–22, with recovery to a postwar maximum, generally in 1927–28, of from 78 to 84 per cent of normal. In July, 1928, the purchasing power of oats stood at 89 in the country as a whole, but by September it had fallen to 58 per cent of normal.

Of the three grains, wheat and corn advanced and receded in about equal measure in the years 1915–16 to 1920. The purchasing power of oats advanced the least and was above 100 in only two years. In 1926–27 and 1927–28 wheat

led the other two grains in purchasing power, but in September, 1928, was considerably below corn and not greatly above oats in purchasing power.

Referring again, by way of summary, to the index relating to all the grains, it may be said that considerable improvement has been effected over the worst conditions. This improvement is measured by the advance in purchasing power from 69 in 1922 to 83 in 1927. In 1928, purchasing power rose from 81 in January to 103 in May, and then fell to 75 in September, when the influence of the new crops became fully felt. It is apparent that the farmer is still buying in a higher-priced market than he is selling in and that the grain farmer is at a disadvantage compared with agriculture in general. These comparisons do not embrace changes in wage rates or in taxes. The latter have shown a large and continuing increase. Changes in the debt burden also are not reckoned with.

The carriers urge, however, that pure-price comparisons are not altogether significant, that in the determination of the well being of the farmer, the number of dollars he receives and what each dollar of outlay procures in the way of useful goods and services are also important factors. A large crop, it is said, may compensate for a reduced price, as may increased efficiency of farm operations. No one has satisfactorily shown the weight to be given to changes in efficiency. The question of the effect of changes in the number of dollars received is considered in the section following. The further contentions, on the one hand, that the farmer does not charge city prices for the things of his own production which he consumes, and, on the other hand, that the city dweller has relatively more dollars to spend than the farmer, do not permit of satisfactory answer without more exhaustive study than is possible on the basis of the present record. Furthermore, comparisons with city dwellers were generally made on the assumption of permanent employment at standard wages. Such factors as unemployment and living conditions in cities were ordinarily not stressed or ever mentioned; yet they are most important. It is difficult to see how comparisons between life on the farm and life in cities based almost solely on dollars can be very helpful for any purpose.

PURCHASING POWER OF AGRICULTURAL INCOME

Purchasing power in the second sense referred to above takes account of the number of dollars the farmer has to spend as well as of what each dollar will buy. More specifically, it is the cash income of the farmer after the payment of interest and taxes, expressed in terms of general prices. It shows, according to its sponsor, "the ability of the farmer to purchase industrial products at the present price level." However, that part of the cash income required in the payment of farm wages is, it may be noted, only indirectly available for the purchase of industrial products. The estimates of gross income, made from official sources, appear to be conservative, but some of the other estimates are drawn from unofficial sources. The price series used is that of nonagricultural commodities at wholesale. The use of this index is more satisfactory than would be the use of the all-commodity price index. Both income and prices are on a 1909–1913 base. The difference in results obtained by using this base rather than the more commonly used 1910–1914 base is not material.

The index of purchasing power of "available cash income" was placed in the record for all farm products, by States, for the years 1909–10 to 1927–28. The only individual product for which the index is given is wheat, and in this case there is no deduction for interest and taxes paid.

So much is said elsewhere in this report about agriculture as a whole that extended discussion along that line is not justified. The index of purchasing

power of average cash income per farm for the entire United States is, however, given below.

Purchasing power per farm of available cash income

Year	Purchasing power	Year	Purchasing power
1909-10	98	1919-20	107
1910-11	101	1920-21	87
1911-12	98	1921-22	7[illegible]
1912-13	98	1922-23	84
1913-14	102	1923-24	9[illegible]
1914-15	103	1924-25	10[illegible]
1915-16	97	1925-26	10[illegible]
1916-17	95	1926-27	10[illegible]
1917-18	123	1927-28	11[illegible]
1918-19	126		

All farms, of whatever description, are represented in the above results. Such an average farm had in 1927-28, 13 per cent more dollars' purchasing power than it had in the base period 1909-13, after paying an increased interest burden and a very considerably greater tax burden. But differences in costs are reckoned with only in so far as the index of nonagricultural prices may be said to reflect them. While this index generally runs higher than the new combined index of prices paid by the farmer for commodities used in living and production, the difference between them has been declining in recent years, until in 1927 and 1928 the new index became slightly higher than the nonagricultural price index. Changes in farm wages are not reflected in the table here given. Wages stood in 1927 and in July, 1928, at a point 70 per cent above 1910-14, or appreciably higher than nonagricultural prices.

Wheat income, without deduction of interest and taxes, is given both in the aggregate and on an acre basis. The following table gives the aggregate purchasing power of wheat for the States in which, on the average of the years 1921-25, wheat represented 10 per cent or more of the farm sales.

Index of aggregate purchasing power of wheat income (1909-13=100)

Year	Kans.	Okla.	Nebr.	N. Dak.	S. Dak.	Mont.	Idaho	Colo.	Oreg.	Wash.	U.S.
1909-10	117	97	110	153	138	56	93	88	86	135	114
1910-11	87	156	80	35	138	70	84	101	105	76	101
1911-12	73	52	93	88	31	100	120	96	99	104	9[illegible]
1912-13	109	102	99	144	117	129	106	111	121	102	9[illegible]
1913-14	111	92	115	78	75	144	93	102	90	112	10[illegible]
1914-15	294	304	173	111	91	163	136	133	130	117	13[illegible]
1915-16	132	207	139	169	161	304	145	132	115	105	14[illegible]
1916-17	170	223	192	44	71	277	153	156	146	96	11[illegible]
1917-18	73	205	27	79	160	171	171	196	93	86	12[illegible]
1918-19	164	223	103	156	215	285	216	193	111	76	13[illegible]
1919-20	227	425	146	81	97	54	202	210	141	104	14[illegible]
1920-21	224	356	151	87	66	234	251	59	178	119	13[illegible]
1921-22	133	206	95	69	49	198	158	163	121	99	9[illegible]
1922-23	106	115	84	94	69	276	129	143	81	47	8[illegible]
1923-24	68	144	40	51	45	259	164	111	116	91	7[illegible]
1924-25	204	309	115	152	88	409	126	181	77	51	11[illegible]
1925-26	108	160	74	132	87	291	238	156	125	96	10[illegible]
1926-27	191	407	76	51	21	333	186	161	112	83	10[illegible]
1927-28	[illegible]	[illegible]	149	228	115	383	248	206	161	116	11[illegible]

The most striking feature of this table is the highly erratic character of the index. To cite a single example, wheat income in South Dakota had a purchasing power of 87 in 1925-26, of 21 in 1926-27, and of 115 in 1927-28. Differences result from variations in yield, in price, or in acreage. The witness who testified on this subject stressed, however, the trends. These can be

observed most clearly in the last column, that for the United States as a whole. In 1918–19 the purchasing power of wheat income reached its maximum point, 159, after which it declined to 75 in 1923–24, recovering to 117 in 1924–25 and being 113 in 1927–28. Changes in acreage in this period obscure the picture, however, and so a second table, showing purchasing power per acre of wheat income, is given.

Index of purchasing power per acre of wheat income (1909–1913=100)

Crop year	Kans.	Okla.	Nebr.	N. Dak.	S. Dak.	Mont.	Idaho	Colo.	Oreg.	Wash.	U. S.
1909-10	109	119	122	152	153	111	112	108	87	110	121
1910-11	108	143	98	37	134	103	85	105	113	89	104
1911-12	88	67	90	78	30	119	112	91	98	103	93
1912-13	102	94	92	147	113	83	100	102	110	99	98
1913-14	92	76	97	84	70	85	90	93	92	108	94
1914-15	191	174	138	124	92	92	120	117	126	145	136
1915-16	87	89	105	165	153	98	104	97	98	116	109
1916-17	116	106	159	50	69	96	117	109	132	134	102
1917-18	108	123	78	92	176	51	109	136	83	103	129
1918-19	126	123	83	163	232	62	110	64	82	76	126
1919-20	109	130	98	73	89	8	86	66	100	92	92
1920-21	135	152	123	88	79	43	110	18	128	107	92
1921-22	71	78	70	39	61	38	67	39	86	86	71
1922-23	61	50	59	85	84	39	55	37	57	42	63
1923-24	46	60	37	43	55	41	76	33	81	82	59
1924-25	116	121	110	145	130	67	75	56	66	60	104
1925-26	70	69	82	112	115	46	124	56	99	102	91
1926-27	105	139	73	69	39	46	86	46	83	88	90
1927-28	(1)	(1)	120	106	129	78	102	55	117	117	90

[1] Not available.

The same pronounced variation of results is found in this table that was noticeable in the preceding one. The extreme case is that of Montana, the purchasing power of whose wheat income in 1919–20 was 8 compared with 62 in the year preceding and 43 in the year following. The general trend is quite different from that for total wheat income. The peak year here is generally 1914–15 instead of 1918–19, the rise is to only 136 instead of 159, and the present position is 90 instead of 113. Improvement is indicated over the lowest year, 1923–24, when the index stood at about three-fifths of normal, to a more or less stable purchasing power in 1926–28 of about 90 per cent of normal. Considerable variations from these general trends occur in the individual States. Of the States shown, only Montana and Colorado in 1927–28 had acre purchasing power below 100. Other States of record which help to bring down the United States average are Illinois 88, Iowa 95, Minnesota 63, Wyoming 62, Utah 84, Arizona 72, Nevada 81, and California 97.

Changes in operating costs, especially over longer periods, are inadequately reflected in this index, and deduction is not made for interest and taxes, which have increased so greatly in the war and postwar period. Taxes on farm land and buildings were in fact 138, 261, and 269 per cent greater in 1926 than in 1913 in the west north-central, mountain, and Pacific groups of States, respectively. The increase in farm wages has already been noted. It also is true that some of the costs increase as yield per acre increases, such being costs of harvesting, twine, and transportation to elevator. These qualifications must be kept in mind.

A trend of purchasing power of the individual agricultural worker for the years 1866 to 1927 was also put in the record. This, standing at 131 in 1927, is said to reflect the decrease in the number of persons engaged in agriculture and the increased output per person. A chief objection to such an index is its failure to give weight to the fact that the increased output per person is the

result in large part of the increased use of machinery. Without reckoning with the farmer's investment in labor-saving appliances, this index is not particularly helpful.

VALUE OF LAND AND OTHER FARM CAPITAL; LAND SALES

The value of land and its appurtenances, which constitutes so large a part of the value of all farm property, may be regarded as perhaps the most fundamental of the secondary evidences of the condition of agriculture. Land values reflect changes in the net income derivable from the use of lands as well as changes in the prevailing interest or "discount" rates. Net income in turn reflects changes in farm expenses and taxes as well as in physical yield of the land and what this yield can be sold for. For reasons indicated presently, land values do not, however, respond quickly to changes in these governing factors. Thus they did not decline so precipitously as did prices in and after 1920 and they continued to decline after recovery had set in in agriculture income.

In two essentials the record is incomplete on the subject of land values. The values furnished are for the most part those of agricultural lands generally, including those devoted to livestock and other production as well as to grain raising. The record also fails to reveal satisfactorily how much of the rise and subsequent decline of land values was merely nominal. An adequate answer to this question would require information as to the percentage of farm lands that changed hands in the period of rising land prices.

The general sources of information as to land values are the estimates of the census and those of the United States Department of Agriculture. Statistics from the latter source are chosen for use here because, among various reasons, they are available by yearly intervals and can be had for later years than can those of the census. Allowance must be made, however, for the fact that the department's figures begin with 1912 and, in index form, are based on the average values of the years 1912–1913–1914, years during which land values were rising.

The course of land values in representative States and in the entire United States is shown in the following table:

Farm real estate, index of estimated value per acre 1912–1928

[1912–1913–1914 = 100]

Year [1]	United States	Minnesota	Iowa	Missouri	North Dakota	South Dakota	Nebraska	Kansas	Oklahoma	Texas	Montana	Idaho	Washington	Oregon
1912	97	93	96	97	97	96	98	101	98	95	97	100	98	97
1913	100	100	99	100	100	101	100	99	101	100	100	101	100	100
1914	103	105	104	103	103	103	102	99	101	105	103	99	103	103
1915	103	107	112	102	103	101	101	101	95	103	100	98	100	99
1916	108	122	128	108	112	108	104	109	104	103	94	99	102	103
1917	117	138	134	115	118	116	110	115	114	115	100	114	112	104
1918	129	155	145	125	124	126	127	122	130	133	106	130	118	112
1919	140	167	160	137	130	145	143	132	140	141	114	146	122	118
1920	170	213	213	167	145	181	179	151	166	174	120	172	140	130
1921	157	212	197	156	141	173	166	149	160	156	105	162	132	126
1922	139	187	162	133	136	146	144	130	139	133	96	136	124	122
1923	135	177	156	127	128	126	139	127	133	128	87	133	117	115
1924	130	170	143	117	114	117	128	118	125	137	81	129	115	113
1925	127	159	136	112	109	115	123	115	131	146	75	123	113	110
1926	124	155	130	104	105	107	123	113	130	146	72	119	112	107
1927	119	145	121	99	100	97	119	113	128	141	70	117	111	109
1928	117	140	117	96	99	96	117	113	127	139	71	116	110	109

[1] All farm land, with improvements. [2] As of Mar. 1.

To understand the decline which has occurred and the present level of land values it is necessary first to note the preceding increase. It will be seen at a glance how large an increase in land values was concentrated in a period of a few years. From March 1, 1912, to March 1, 1917, five years, the index of values in the United States advanced from 97 to 117, or slightly over 20 per cent; from March 1, 1917, to March 1, 1920, three years, it advanced from 117 to 170, an additional 45 per cent. In every State, 1920 was the peak year. The percentage increase from the base period to 1920 varied, however, within rather wide limits, being greatest in Minnesota and Iowa, each 113 per cent, and in South Dakota, Nebraska, Texas, and Idaho, where the increase ranged from 81 down to 72 per cent. In Missouri, Oklahoma, Kansas, North Dakota, Washington, Oregon, and Montana the increase was less than 70 per cent, the average for the country. The largest increases were registered, it will be noted, in States in which a varied crop and livestock agriculture is carried on rather than in the States specializing in cash grain production.

What, next, of the decline of land values since 1920? This is shown in the following table, together with the percentage increases from pre-war to 1920 and 1928, respectively:

State	Per cent decrease in value per acre, 1920 to 1928 (1912-1914=100)	Per cent increase in value per acre over 1912-1914	
		1920	1928 [1]
Minnesota	34	113	40
Iowa	45	113	17
South Dakota	47	81	*4*
Nebraska	35	79	17
Texas	20	74	39
Idaho	33	72	16
Missouri	43	67	*4*
Oklahoma	23	66	27
Kansas	25	51	13
North Dakota	32	45	*1*
Washington	21	40	10
Oregon	18	30	6
Montana	44	26	*29*
United States	31	70	17

[1] Decreases in italic.

As would be expected, the decline in land values from 1920 to 1928 was generally greatest where the increase had been the largest in the preceding period. Montana, however, shows nearly the maximum percentage decline though it had experienced the smallest increase from the base period to 1920. This serves to illustrate the point that changes in acre value reflect in part changes in the uses to which lands are put. Thus in the case of Montana, nonirrigated tillable lands declined in acreage from 32 to 19 millions from 1921 to 1927, and grazing lands increased from 13 to 29 millions. The value of these tillable lands, according to State authorities, declined in this period only $1.58 per acre or 10.7 per cent, while that of grazing lands fell $2.24 or 32.3 per cent. The large reversion of crop lands to pasturage had a steadying influence on the value of the remaining crop lands but a depressing effect on the value of pasturage lands and of all lands. In the case of Oregon, on the other hand, land formerly devoted to wheat production is being used more intensively for fruit

raising and its value has risen. This fact of changes in the use made of land is of importance in any interpretation of changes in land values.

It will next be noted in the preceding table that in the United States as a whole values in 1928 were 17 per cent above those of 1912–1914. In Minnesota and Texas, however, they were some 40 per cent above and in Montana 29 per cent below. Of the remaining 10 States, 3 show values less by 1 to 4 per cent than those of the base period. Attention is again called to the base used in these comparisons. The census values put in the record show a 35 per cent net increase in 1910 to 1925 in the value per acre of lands and buildings. The increase shown in the table presented earlier was 27 per cent from the average of the years 1912–1914 to 1925. Before attaching particular significance to these percentage increases, consideration must be given to the approximately 50 per cent net increase in the general price level since 1912–1914.

Both shippers and carriers presented evidence on this subject. The results obtained depend in considerable part on the price series used for converting values expressed in current dollars into values expressed in pre-war dollars. The carriers used 1910 wholesale prices in connection with census land values, while others used the same price series on a 1910–1914 base or the new index of what farmers pay for commodities at retail and in wages and taxes. It has seemed best, for the purpose in hand, to use the wholesale commodity price index on a 1913 base. In the following table the index of land values previously given is reduced to dollars of constant purchasing power by dividing by the index of wholesale prices on a 1913 base. The table can not be extended beyond 1927.

Farm real estate, index of estimated value per acre (1912–14=100) in terms of 1913 wholesale commodity prices

[Previous index of land values on 1912–1914 base divided by United States Bureau of Labor statistics index of wholesale commodity prices on 1913 base]

Year	United States	Minnesota	Iowa	Missouri	North Dakota	South Dakota	Nebraska	Kansas	Oklahoma	Texas	Montana	Idaho	Washington	Oregon
1912	98	96	97	98	98	97	99	102	99	96	98	101	99	9[illegible]
1913	100	100	99	100	100	101	100	99	101	100	100	101	100	10[illegible]
1914	105	107	106	105	108	105	104	101	103	107	105	101	105	10[illegible]
1915	102	106	111	101	102	100	100	102	94	102	99	95	99	9[illegible]
1916	85	96	101	85	88	85	82	86	82	81	74	78	80	7[illegible]
1917	66	78	76	65	67	66	62	65	64	65	56	64	63	6[illegible]
1918	66	80	75	64	64	65	65	63	67	69	55	67	61	6[illegible]
1919	68	81	78	67	63	70	70	64	68	68	55	71	59	5[illegible]
1920	75	94	94	74	64	80	79	67	73	77	56	76	62	6[illegible]
1921	107	144	134	106	96	118	113	101	109	106	71	110	90	9[illegible]
1922	93	126	109	89	91	98	97	87	93	89	64	91	83	8[illegible]
1923	88	115	101	84	83	82	90	82	86	83	56	86	76	7[illegible]
1924	87	113	95	78	76	78	85	79	83	91	54	85	77	7[illegible]
1925	80	100	86	70	69	72	77	72	82	82	47	77	71	6[illegible]
1926	82	103	86	69	70	71	81	75	86	97	48	79	74	7[illegible]
1927	81	99	82	67	68	66	81	77	87	96	48	80	76	7[illegible]

The contrasts between this and the second preceding table are marked. Only in Minnesota and Iowa and, to a less extent in South Dakota and Nebraska, did considerable increases in the "purchasing power" of lands occur. Land values also distinctly lagged behind prices in general as seen in the fact that in 6 of the 13 States the peak year came before the war, most

commonly in 1914. This was generally the year of the secondary peak for the other 7 States, whose main peak came in 1921, after prices had broken. In 1920 in the United States as a whole lands had only three-fourths of the value, expressed in 1913 dollars, that lands in 1912–14 had.

Since 1921 there has been a net loss of nearly a fourth in purchasing power, with the result that the purchasing power of lands per acre in 1927 was 19 per cent below that of 1912–14. The range, among the States shown, in the decline from 1912–14 to 1927 is from 1 per cent in the case of Minnesota to 32 per cent in the case of Montana, with the remainder ranging from 34 down to 4 per cent. A quite general improvement occurred in 1926, but this was due to a drop in the commodity-price level and not to an increase of land values. This improvement was not held in the year following, though in both years the percentage change was small. There has been, in fact, a considerable degree of stability of land values shown in the last two years.

The significance of all foregoing is principally in what is reveals as to the present compared with the pre-war earning power of agriculture. Despite a well-maintained volume of physical production, the chief earning assets of agriculture command prices only slightly more than a sixth higher than they did in 1912–14, while in relation to the prices of commodities bought and sold every day they command a price a fifth lower than they did in 1912–14. Though, owing to the pressure of forced sales and to the presence of distress lands, values have responded more slowly than they otherwise would to changes in the governing situation, it is reasonable to conclude that the present level of land values reflects an earning power below that of 1912–14. The actual drop of values, running over 16 billions of dollars in the entire United States from 1920 to 1925, is of less general significance, except for those who incurred obligations at high prices to be discharged in a period of lower prices. To these we turn in the succeeding section. A word may be said, however, about the volume of land sales.

The volume of sales became very small after the collapse of land values. The market was held down not only by the general outlook for agriculture but by the specific factors named above (forced sales and distress lands). A considerable reduction (some 31,000,000 acres) of farm acreage also occurred between 1920 and 1925. Tenants likewise were not in position to acquire lands, and the general fact that values were falling made buyers cautious.

There is indication, however, of some picking up in voluntary sales in the years 1927 and 1928, in scattered communities. Temporary improvements of crop conditions sometimes stimulated demand. Buyers were in large part local farmers extending their holdings while prices were down; to a less extent they were tenants; and to some extent they were residents of towns and cities acquiring farm lands for investment or speculative purposes. Excepting Kansas and Oregon, where prices for the last two or three years have been fairly stable, these purchases were made on a market still declining, though moderately, particularly in Oklahoma, Montana, Idaho, and Washington. There is reason to believe that land values will shortly be in a position to reflect more clearly such improvement as has occurred in farm earnings.

FARM INDEBTEDNESS

The evidence as to farm indebtedness will be examined first under the head of real-estate mortgage indebtedness and then under that of chattel-mortgage and other indebtedness.

Under normal conditions agricultural property carries a considerable amount of real-estate mortgage indebtedness, incurred in the purchase of lands, in making improvements, and for numerous other reasons. Thus in 1910 there was mortgage indebtedness on owner-operated farms alone of 1.7 billions. In Minnesota in that year 46.0 per cent of the owner-operated farms were mortgaged and to 26.4 per cent of their value; in Montana, 20.6 per cent of the farms to 24.1 per cent of their value. The increase in this indebtedness to 4 billions in 1920 and 4.5 billions in 1925 is pointed to as evidence of adverse conditions experienced by agriculture. In the following table this increase is set forth for a number of States for the census years. Annual data are available in only a very limited way.

Mortgage debt on owner-operated farms

State	1910	1920	1925
Minnesota	$77, 866, 000	$254, 475, 000	$287, 027, 000
Iowa	204, 243, 000	429, 917, 070	625, 629, 000
North Dakota	47, 842, 000	108, 285, 000	82, 411, 000
South Dakota	32, 771, 000	89, 875, 000	100, 306, 000
Nebraska	62, 373, 000	168, 508, 000	216, 256, 000
Kansas	70, 820, 000	109, 914, 000	130, 231, 000
Montana	10, 741, 000	77, 950, 000	42, 565, 000
Idaho	14, 557, 000	69, 868, 000	54, 912, 000
Washington	25, 645, 000	61, 121, 000	74, 212, 000
Oregon	21, 166, 000	51, 999, 000	65, 592, 000
United States	1, 726, 173, 000	4, 003, 767, 000	4, 517, 239, 000

In the United States as a whole, mortgage indebtedness increased 131.9 per cent from 1910 to 1920 and 12.8 per cent from 1920 to 1925; in the 10 States shown above the increases were 130.9 and 12.0 per cent, respectively. For the 1910–1920 period more detailed information is of record for only four States, as follows:

State	Percentage of owner-operated farms mortgaged [1]			Ratio of mortgage indebtedness to value [2]			Per cent increase of indebtedness	
	1910	1920	1925	1910	1920	1925	1910–1920	1920–1925
Minnesota	46.0	52.4	48.6	26.4	27.5	43.6	226.8	4.9
South Dakota	37.4	57.0	62.4	21.2	21.8	42.7	174.3	11.6
Montana	20.6	59.5	54.6	24.1	32.4	44.7	625.8	[3] 5.4
Oklahoma	43.5	61.4	48.3	22.4	26.9	39.7		

[1] All owner-operated farms. [2] Only farms operated by full owners. [3] Decrease.

It will be seen that from 1910 to 1920 the percentage of owner-operated farms mortgaged increased very materially in three of the States and noticeably in Minnesota. On the other hand, the ratio of mortgage indebtedness to value of land and buildings was practically constant in this period in Minnesota and South Dakota, increased moderately in Oklahoma, and materially in Montana alone. The fact that more farms were mortgaged in 1920 than in 1910 may indicate either the purchase of farms previously without mortgages by persons unable to pay cash in full, or the placing of mortgages on farms without change of ownership. Both processes were at work in proportions which it is difficult to state definitely. The evidence as to land sales, land values, and the exten-

sion and profitableness of operations seems to indicate that the turnover of lands contributed in this period more largely than any other factor to the increase of mortgage indebtedness. In Montana, however, where, as previously indicated, land values increased the least of any State in the period from 1912–1914 to 1920, the increase in percentage of farms mortgaged and in the ratio of debt to value reflects in large part the vicissitudes of homesteading operations. The number of owner-operated farms in this State increased from approximately 21,500 in 1910 to 38,500 in 1920. The expansion of farming operations generally throughout the western district, to the extent of 92,000,000 acres, or 16 per cent, from 1910 to 1920, would, in fact, furnish the basis for a considerable expansion of mortgage indebtedness.

Factors probably secondary in importance in accounting for the increase of mortgage indebtedness from 1910 to 1920 are the purchase of power and other machinery, to some extent because of the scarcity of labor, the making of improvements, and, probably in a limited degree, the funding of loans made because of temporarily adverse crop, livestock, or other conditions.

In the period from 1920 to 1925 the aggregate indebtedness on owner-operated farms increased 12.8 per cent in the United States and 12 per cent in the above western States. In contrast to the situation existing in the earlier period, when increases occurred in every State, three of the States show decreases in mortgage indebtedness (Montana 45.4 per cent, North Dakota 23.9 per cent, and Idaho 21.4 per cent). The increases in the other seven States range from 11 to 49 per cent. The largest increases are in Minnesota, Iowa, Nebraska, and Oregon.

The percentage of owner-operated farms mortgaged and the ratio of debt to value in 11 western States, 1920 and 1925, are as follows:

State	Percentage of owner-operated farms mortgaged [1]		Ratio of mortgaged indebtedness to value [1]		Ratio, 1925 indebtedness to 1920 value
	1920	1925	1920	1925	
Minnesota	51.0	46.2	27.5	43.6	28.8
Iowa	52.9	53.7	27.0	49.2	34.5
North Dakota	66.4	59.2	28.5	41.1	21.4
South Dakota	51.5	54.5	21.8	42.7	24.3
Nebraska	47.4	52.0	23.9	42.2	30.6
Kansas	41.0	41.0	25.9	39.1	30.7
Oklahoma	48.8	45.0	26.9	39.7	28.8
Montana	55.3	49.3	32.4	44.7	17.7
Idaho	56.6	52.1	31.2	45.0	24.6
Washington	43.5	43.8	30.3	37.2	30.7
Oregon	43.1	44.1	31.2	37.7	30.3
United States	30.4	34.1	29.1	41.9	32.8

[1] Only farms operated by full owners.

The statistics given are not entirely satisfactory, owing to the fact that a substantial part of the full owners make no report on their indebtedness. Whether the ratios given above would be materially altered if all reported can not be determined.

In 5 of the 11 States (Minnesota, North Dakota, Oklahoma, Montana, and Idaho) the percentage of owner-operated farms mortgaged declined from 1920 to 1925; in Iowa, Kansas, Washington, and Oregon it remained practically constant; and in Nebraska it increased moderately. The ratio of debt to value of lands and buildings, on the other hand, increased in every one of the States

and in most cases materially. A larger proportion of the farms were free of mortgage indebtedness but the farms mortgaged were carrying heavier mortgages in relation to value than in 1920. In large measure the increase in the debt-value ratio resulted from declining land values. The index of farm real-estate values for the entire United States fell from 170 in 1920 to 127 in 1925. However, as indicated in the last column of the table, had property values been the same in 1925 as they were in 1920, the ratio of debt to value in 1925 would have exceeded the 1920 ratio, except in North Dakota, Montana, and Idaho.

In accounting for the later increases reference must be made to the fact, well established on the record, that after the break of farm prices in 1920, grain farmers as well as livestock men and others, found it necessary to borrow at their banks or elsewhere in what by normal standards would be considered excessive amounts. Farming losses, including heavy losses on inventory, necessitated borrowing to meet current obligations, taxes, and interest. The banks, themselves affected by the condition of their customers and by the decline of land values, soon found it necessary to secure themselves by requiring that the debts owing them be funded into mortgage indebtedness. In this sense a large part of the increased indebtedness of the 1920–1925 period represented a conversion of debts which had originally taken another form.

The decreases in aggregate mortgage indebtedness in this 5-year period, on the other hand, which in some States outweighed the increases, represent more generally defaults of one character or another rather than the outright liquidation of indebtedness. As detailed in a succeeding section, foreclosures and bankruptcies among farmers occurred on an enlarged scale. In some cases the result was the outright abandonment of operations, particularly on the less advantageous or marginal lands; in other cases, foreclosed lands passed into the hands of creditors, causing the wiping out of the old mortgages and the placing of new ones, if any, on a much lower scale of values. Instances were cited in which farmers had reduced their indebtedness out of earnings, but retirements accomplished in this way appear to have been considerably less than those which were accompanied by the loss of ownership.

Summarizing the 1910–1925 period, it may be said that the net increase of mortgage indebtedness was due primarily to the purchase of high-priced lands and the indirect funding of operating losses. Secondary factors were the purchase of power machinery and the extension of farming operations generally. The situation in 1920 was precarious in that it required the maintenance of the high level of land prices then prevailing. The decline of land values rendered valueless a large part of the obligations given in the purchase of land. In 1925 much indebtedness remainded, representing obligations which had then been carried for a number of years. This hang-over of debts, to which livestock and other operations contributed as well as grain production, constitutes a factor of importance in judging the condition of agriculture today. There has been improvement since 1925, though on this point the record is far from satisfactory. Interest on mortgage and other indebtedness declined from 840 millions in 1921–22 to 758 millions in the years 1924–25 and 1925–26, with a subsequent decline to 750 millions in 1926–27. In places good crops in one or more years have made possible a considerable reduction of indebtedness, as in 1927 in the Pacific Northwest. The presence of newer types of credit agencies also serves to help ease the situation. The Federal land banks loan money for long periods of time on favorable terms. Debtors may amortize their debt, principal and interest, by making periodic payments through the life of their obligation. This appears to have a tendency to

continue mortgage indebtedness, leaving more of the farmers' capital free for other uses, comparable with what has long been established practice in manufacturing enterprises. Facts like these must be kept in view in a consideration of mortgage indebtedness on farms. But the real-estate mortgage indebtedness remains at a higher than normal level and its reduction remains a problem for agriculture.

Chattel and other similar indebtedness can be discussed rather briefly. The placing of chattel mortgages (except where these are placed on articles, such as automobiles, commonly purchased on a deferred-payment basis) is a distinct indication of a lack of credit. Tenant farmers ordinarily require greater use of them than owner operators. There are no satisfactory statistics of record from which it is possible to generalize as to the extent of chattel mortgages at different times in the period under review. The evidence is convincing, however, that a very considerable increase occurred in the period after 1920, and it appears that chattels were mortgaged which previously had not been considered suitable for such purposes. Testimony as to chattel mortgages was most extensive in the case of Kansas, where the problems of the tenant farmer were generally stressed more than they were in other parts of the investigation. There was little evidence as to foreclosures of chattel mortgages, though some as to the difficulty of collecting them. There was indication of some improvement in conditions in the Northwest and Pacific Northwest, but how extensive it has been can not be said.

Crop mortgages also came into more extensive use. While tenants are more often required to give such mortgages to secure the owner, the owner operator himself resorted to this means of carrying on his operations.

Seed-wheat pools and State seed or feed loans have also been resorted to. Seed pools are not, of course, a new thing at all. Crop failures due to climatic conditions appear to be the chief reason for them. Their use in the period since 1920 is indicative of both unusually severe crop conditions in particular years and of depleted credit. In some places State aid has been provided for farmers unable to finance the carrying on of operations, and tenants have been assisted by landowners to keep them on the land.

In the succeeding section the foreclosures and bankruptcies among farmers, previously referred to, will be more fully accounted for and described.

FARM BANKRUPTCIES AND FORECLOSURES OF FARM PROPERTIES

The large growth of farm indebtedness, analyzed in the preceding section, necessarily entailed a greatly augmented interest burden. An increase in both the amount and the proportion of delinquent interest would be expected under these conditions and such there has been. A single example is the one cited by the president of the Federal land bank at Wichita, the territory of which embraces Kansas, Oklahoma, Colorado, and New Mexico. Delinquent interest at this bank amounted in 1927 to $474,056 on loans aggregating 93 millions, as compared with $12,722 in 1918 on loans of a little over 16 millions. The farmers served by the bank were not, of course, exclusively engaged in grain production. Generally speaking, interest became delinquent when, on top of a number of years of poor earnings, one or more years of poor crops occurred.

The following statistics of interest and tax delinquencies, not collected on a uniform basis, revealed the general situation in some of the northern and western States.

Year	Delinquent rural real-estate taxes, Wisconsin	Accumulated delinquent taxes, Montana	Interest delinquent on Montana State farm loans	Delinquent taxes, two Washington counties [1]
1918	(2)	$4,955,000		
1919	$820,317	6,491,000		
1920	1,455,307	9,572,000		$114,43
1921	2,360,441	(2)	$157,340	187,05
1922	2,346,435	12,280,000	282,574	300,67
1923	2,470,112	12,524,000	414,512	253,79
1924	2,504,220	15,042,000	630,264	289,94
1925	2,298,356	14,054,000	780,000	443,68
1926	2,499,173	13,830,000	354,975	(2)

[1] Walla Walla and Columbia Counties.
[2] Not given.

In interpreting these figures, allowance must be made for the time which elapses between the occurrence of the conditions which lead to delinquency and that at which the interest or taxes are recognized as delinquent. Taxes are sometimes allowed to remain unpaid while it is being determined whether it is advantageous to pay them rather than lose the property. Both interest and taxes may be delinquent on lands which have become abandoned; on the other hand, a reduction in the amount delinquent may be the result of a change of ownership, the new owner taking the back payments out of the price he pays and meeting future payments. A reduction may also result from borrowing to meet interest and taxes. Much of such borrowing did in fact occur.

With all these qualifications, it is difficult to interpret the figures given above. They show, however, large increases in the aggregate of delinquencies and little change for the better in the years covered. The apparent exception in the case of delinquent interest on Montana State farm loans is accounted for in large measure by the reduction of 37 per cent in the volume of farm loans from 1925 to 1926. The situation in Washington needs explanation. In Walla Walla County said to be the leading wheat county of the State, 5 per cent of the tax roll was delinquent in 1920 and 28 per cent in 1926; in Columbia Country, on the other hand, delinquencies declined from 10 per cent in 1920 to 4 per cent in 1926. In two other counties south of the Snake River, Asotin and Garfield, delinquent interest in 1925 and 1926 averaged about 23 per cent of the tax roll. Tax sales in North Dakota were extensive from 1923 to 1926, the year of record. On December 31, 1927, tax delinquencies on the books of the Federal land bank at Spokane amounted to $1,613,605, a considerable sum.

However, the evidence, particularly that relating to the Pacific Northwest, taken toward the close of the hearings, points to some improvement in the situation, as shown by the fact that current interest and tax payments were being met more promptly in 1927 and 1928 and that some success was being had in catching up on delinquencies. Such was the testimony, for example, as to the State of Washington generally and as to Walla Walla and Whitman Counties, and as to Gilliam and Wheeler Counties, Oreg. How extensive the improvement has been was not established.

In turning next to the record of farm foreclosures and bankruptcies, it is to be borne in mind that increasing indebtedness rising and falling land values, poor farming returns, delinquent interest and taxes, and foreclosures and bankruptcies are all parts of one picture. The evidence is, therefore, to some extent cumulative.

A convenient summary of the many statistics put in the record as to farm foreclosures, bankruptcies, and other losses of farm properties is provided by

an exhibit of the representative of the United States Department of Agriculture. In abridged form, this exhibit follows:

State and division	Percentage of farmers who lost farms		
	Average January, 1920–March, 1923 [1]	Year ending March, 1926 [2]	Year ending March, 1927 [2]
East north central	1.75	1.59	1.66
Minnesota	2.50	2.68	2.47
Iowa	2.81	2.69	2.73
Missouri	2.34	2.14	2.17
North Dakota	4.79	4.63	4.30
South Dakota	3.86	5.25	5.11
Nebraska	2.84	2.19	2.73
Kansas	1.79	1.58	1.60
West north central	2.73	2.66	2.63
Montana	8.55	6.08	5.80
Wyoming	3.49	2.79	2.56
Colorado	4.47	4.33	3.63
Mountain	6.22	4.83	4.29

[1] Includes farms lost through and without foreclosure and bankruptcy, based on survey covering 60,000 owner farmers.
[2] Includes farms lost through foreclosure of mortgage, bankruptcy, default of contract, and sales, surrender, or other transfer of title to avoid foreclosure.

This exhibit is not complete in every particular. Pre-war figures are not given; a considerable part of the territory embraced in this proceeding is omitted; 1924, 1925, and 1928 figures are lacking; tenants' losses are not included; and separation of losses resulting from livestock and other operations from those on grain production is not possible. The establishment of trends is rendered difficult by the difference in method of computation of losses in the earlier and the later period and by the absence of data for 1924 and 1925.

However, the great extent to which farms were lost in the period since 1920 is at once apparent. The period from January, 1920, to March, 1923, is one of 3⅛ years. If the average number of losses in this period is multiplied by 5⅓ and to the result are added the losses shown for 1926 and 1927, it will be found that in the east north-central division, introduced for purposes of comparison, 8.81 farmers out of each 100 lost their farms in the period of a little over five years; that in the west north-central division 13.93 of every 100 lost their farms; and in the entire mountain group of States, 28.82 of every 100. It is likely that if data were available for 1924 and 1925 over a sixth of the farms in the west north-central division would be found to have been lost in the 1920–1927 period and at least a third of the farms in the mountain States. As indicated above, these figures do not relate solely to grain production.

For reasons hitherto stated, it is difficult to determine definitely whether or not there has been a trend toward improvement in delinquencies in recent years. The evidence provided in the table above is not clear cut except in the case of the mountain States, where, after heavy losses, a considerable reduction is to be seen in the later years. From annual data of record relating to certain States or counties there appears, however, to have been some improvement. Thus in Oklahoma the peak in farm foreclosures came in 1924; in Bourbon County, Kansas, apparently in 1925; in farm bankruptcies in 24 South Dakota counties in 1925; in North Dakota farm bankruptcies in 1924; in foreclosures

in the region covered by the Spokane Fedelar land bank (Washington, Oregon, Idaho, and Montana) in 1926. In Montana, however, the peak of foreclosures by this bank occurred in 1927, the last year of record. Allowance must be made, moreover, for the lag which characterizes foreclosure and bankruptcy proceedings. In some cases officials expressed the view that the foreclosures should have come sooner than they did. Allowance must also be made for the fact that, to be indicative of recovery, the drop from the peak must be at an accelerated rate, since each foreclosure or bankruptcy reduces the number of properties subject to such action.

Much was said about farm bankruptcies, one of the forms which farm failures, including those of tenants, take. As a matter of fact, the actual number of bankruptcies was not great. In 1925, the peak year of record for the country as a whole, there were only 1.24 bankruptcies per 1,000 farmers. The significance of the bankruptcy figures lies principally in what they show as to trends. The percentage increase was very great. Thus, to take an extreme case, there were 0.34 bankruptcies per 1,000 farms in Montana in 1910, 11.75 in 1924, and 13.30 in 1926. In Iowa, the increase was from 0.39 in 1910 to 4.03 in 1925, the peak year. Bankruptcies ranged much higher in the north and west than in the United States as a whole, for the range in the latter case was only from 0.13 in 1910 to the peak of 1.24 in 1925. Barring Montana, where bankruptcies were high from 1914 to 1917, bankruptcies did not begin to mount until about 1922. Of the 10 States shown above, 4 (Minnesota, Kansas, North Dakota, and Washington) had their peak in 1924; 2 (Iowa and Idaho) in 1925; and 4 (Nebraska, South Dakota, Montana, and Oregon) in 1926. In the United States as a whole there was marked stability from 1924 to 1926.

Reference has been made in another connection to the fact that failures are much more extensive among business establishments than among farming enterprises. This normal relationship held throughout the post-war period. However, the percentage increase of farm failures was very materially greater in this period than was that of business failures.

What, it may be asked, is the present credit standing of the grain-farming industry after this period of general financial difficulty? Little statistical evidence is available on this subject. Seed pools in 1927 seemed to be limited very largely to parts of Kansas and Oklahoma. The testimony as to the credit of farmers in buying at retail was so limited as not to permit of generalization. Bankers generally agreed that they now require greater security than formerly in making loans to farmers, but this may reflect as much the condition of the banks as it does the condition of agriculture. The record as to indebtedness, previously reviewed, leaves no doubt, however, that the farmer's credit standing is still weakened. Eventually, it is to be expected, as a result of the writing off of losses up to this date and the making up of other losses out of future earnings, agriculture will regain its former strong credit standing. The course of farm failures was still running at the conclusion of the hearings, but at a diminished rate. The good 1927 crop enabled the Pacific Northwest, last among the regions on which testimony as to economic conditions was taken, to show definite signs of improvement. What a later survey of other parts of the western district would have shown can not be said.

FARM MAINTENANCE: SALES OF FARM EQUIPMENT

These again are indirect indications of the condition of agriculture. Though no satisfactory statistical evidence was presented, it is clear that during a number of years farm properties in many sections were not maintained at their

customary or at an economical standard, and that the construction of new buildings was very limited. Expenditures for maintenance are, of course, among the first to be curtailed when earnings decline and may be among the last to be enlarged when earnings begin to improve. They reflect the working of the forces bearing on farm returns previously considered in a number of connections. There was some indication that maintenance was curtailed to facilitate the purchase of combines and other power machinery. Repeated poor crops also were a factor in some regions. Recovery in maintenance expenditures was indicated in the northern and western territory embraced in the later parts of our hearings, though the record is not clear as to how extensive the recovery has been. Evidence relating to other areas was received only as of an earlier date.

It is agreed that purchases of farm equipment and machinery dropped to a low level following the fall of agricultural prices. Total domestic sales by manufacturers amounted to some 223 million dollars in 1922, to 312 in 1923, 278 in 1924, 340 in 1925, 365 in 1926, and 390 in 1927. Difficulties in accepting the indicated increase in sales since 1925 as clear evidence of improved agricultural conditions arise from the lack of a normal volume of expenditures; from the fact that after purchases have been long deferred a point will be reached where further repairing of old equipment is impossible; and from the fact that a considerable part of the increase is attributable to the purchase of tractors and combines for use in regions of expanding wheat production, such as western Kansas and Nebraska and Montana, or for use in older regions where a large adjustment of production methods is in progress. Some reduction in the demand for machinery and equipment followed the decline in crop acreage. Part of the recovery in purchases in 1926 and 1927 was attributable to good crops, just as poor crops contributed to the lower volume of purchases in other years. The larger volume of purchases in later years is indicative of ability to buy, whether from earnings or by means of loans or extension of credit.

It is concluded from the evidence as to both maintenance and equipment expenditures that some improvement of agricultural conditions has occurred. It is impossible, however, to draw any general conclusion from this class of evidence as to how extensive the improvement has been.

HOME CONVENIENCES: STANDARD OF LIVING

Efforts to establish the existence of a depressed condition in agriculture by citing the limited number of farms equipped with certain modern conveniences can be given little weight, inasmuch as it was not established that these conveniences had been enjoyed in greater measure in some previous period of farm prosperity. An exception is the telephone, as to which the record shows in the State of Kansas a decline of 10 per cent from 1910 to 1920 in the number of subscribers of the smaller companies serving rural districts. A low or restricted standard of living is often associated with efforts to accumulate property. On the other hand, even a considerable increase in recent years in the number of farm homes equipped with modern conveniences, such as was shown to have occurred in the State of Nebraska, may throw little light on the condition of agriculture generally, if, even now, only a little over a tenth of the homes are equipped with one or more of these conveniences. The increase in the number of radio sets from 1925 to 1927 was, as would be expected, large, but Nebraska is the only State in which in 1927 more than half of the farm homes have radios. In Oklahoma 14 per cent had them; in Iowa, 45 per cent.

There is some evidence, though it is not extensive, to the effect that farmers in certain regions are working longer hours and making larger calls on their wives and children for help than formerly. The evidence as to the amount of schooling permitted the children of farmers in recent years is limited and inconclusive. In general, it is evident that the farmer's scale of values has changed and that he is making a greater effort than formerly to conform to the city dweller's standards in the matter of clothing, transportation, and perhaps other things. This change possibly explains in part the farmer's desire to economize on hired labor and on other items of farm-operating costs. The necessity of meeting obligations owing others is, of course, also an important factor.

Considerable was said about the extent and increase of farm-owned motor vehicles. From 1920 to 1926 farm-owned trucks increased in number 271 per cent in the western group of States, 777 per cent in the Mountain-Pacific group, and 259 per cent in the United States, while passenger cars so owned increased 67, 101, and 88 per cent, respectively. The smallest increases in the latter were in Iowa, Nebraska, Kansas, and South Dakota, while the largest were generally in States such as Louisiana and Arkansas, which in 1920 showed a small or moderate percentage of farms having motor vehicles. No evidence was presented as to the kinds of car purchased. The generally considerable and in some cases large increase in motor vehicles is indicative of buying power, though it is not shown of record when such power was possessed in greatest measure.

The conclusion reached is, then, that while there has been some necessary retrenchment of expenditures for hired labor and in other related farm operating costs, a part of the retrenchment which has occurred in these expenditures has been due to a shifting of values, indicative of an effort to raise the farmer's standard of living. The record gives no support for the view, expressed by a few, that the American farmer is passing into a condition comparable to that of the peasantry of other countries.

It was contended also that, if the farmer has not lost ground absolutely, he has lost relatively because of the advance in the city dweller's standard of living during and since the war. The inherent difficulties of comparing standards of living of different occupation groups are so great as to preclude any findings on this subject.

FARM POPULATION

The loss in farm population from January 1, 1920, to January 1, 1928, is estimated to have been 3,300,000 persons, or more than 10 per cent. The average loss from 1920 to the beginning of 1925 is set at 400,000 per annum, while that of the year 1925 is stated to have been 441,000, that of 1926, 649,000, and that of 1927, 193,000. These are, however, net figures and reflect births and deaths as well as other changes. In four recent years there have been movements from and to the farms estimated as follows:

Year	From farms to cities, towns, and villages	From cities, towns, and villages to farms	Net movement from farms
1924	2,075,000	1,396,000	679,000
1925	2,035,000	1,134,000	901,000
1926	2,155,000	1,135,000	1,020,000
1927	1,978,000	1,374,000	604,000
Average	2,061,000	1,260,000	801,000

In interpreting these figures, allowance must be made for the lag which characterizes population movements. This was set at about two years by one witness. The movement from the farms represents, of course, mostly that of farm hands and sons and daughters of farmers, since the number of owner operators and tenants has declined only slightly (some 75,000 from 1920 to 1925). There have been, however, many changes in the personnel of the owners and tenants.

The foregoing statistics relate to the country as a whole and to all branches of agriculture. Census figures indicate that the losses from 1920 to 1925 were particularly heavy in Montana, Idaho, Oklahoma, and Missouri. From January 1, 1926, to January 1, 1928, the number of persons living on farms declined 3 per cent in the United States, 3.8 per cent in the west north-central States, 4.1 per cent in the west south-central States, 5.1 per cent in the mountain States, and 2.8 per cent in the Pacific States. • In some States there have been internal shifts of population, as from eastern Kansas to the newer wheat sections in the western part of the State, and from the predominantly wheat section of eastern Washington to a generally different type of agriculture in the western part of the State.

Those who stress the loss in farm population as an indication of the condition of agriculture concede that there is normally a net movement from farm to city and that this movement may have been accelerated in recent years by the increased efficiency of farm operations and by the wider use of machinery on the farms. It is urged, however, that the outflow since 1920 has been so very large as to leave no doubt as to the unsatisfactory condition of agriculture in this period.

It is difficult to assess the condition of an industry which has suffered a net loss of the magnitude indicated above and yet has abandoned only a minor part of its operations, maintained its earlier volume of production, and, in recent years, has been able to attract 6 people for every 10 it has lost. A number of forces are at work. On the one hand, the over expansion of agriculture under the stimulus of war conditions made a large loss of farm labor in the postwar period inevitable, and, similarly, the adverse postwar conditions prompted the development of more efficient farming methods and the adoption of labor-saving machinery. On the other hand, improved methods and the increased use of machinery can not be attributed entirely to the postwar condition of agriculture, and the attractions which the city has had do not necessarily reflect a distressed condition of agriculture. From such indexes as are available it is apparent that the real wages of industrial workers have been substantially greater than those of agricultural labor in the postwar period. Noneconomic considerations, beyond assessment, also play an important part in determining the movement from the farms, as they do the farmward movement also.

The large loss of farm population was, it may be concluded, part of an inevitable adjustment, rendered difficult because it was pressed into so short a period of time. This phase of the adjustment has been largely accomplished and it leaves the industry stronger than it otherwise would be.

FARM TENANCY

A high or an increasing proportion of tenancy has been varyingly interpreted on this record as signifying a normal condition of agriculture and a depressed one. The increase in Nebraska in the number of farms operated by tenants from 40.9 per cent in 1910 to 49.3 per cent in 1920 (from 38.1 to 42.9 per cent according to the Federal census) was cited as indicating that tenancy

may increase during a period of favorable agricultural conditions. The period here under review is, of course, that beginning with the fall in agricultural prices in 1920–21. Increases in tenancy occurred from 1920 to 1925 in most of the important grain States, as is indicated by the following table of percentage of tenants to all farmers:

State	1910	1920	1925	State	1910	1920	1925
Oklahoma	54.8	51.0	58.6	South Dakota	24.8	34.9	41.5
Kansas	36.8	40.4	42.2	Montana	8.9	11.3	21.9
Nebraska	38.1	42.9	46.4	Idaho	10.3	15.9	24.4
Iowa	37.8	41.7	44.7	Washington	13.7	18.7	16.3
Minnesota	21.0	24.7	27.1	Oregon	15.1	18.8	16.8
North Dakota	14.3	25.6	34.4				

The increases from 1920 to 1925 are particularly marked in Oklahoma, North Dakota, South Dakota, Montana, and Idaho. Decreases are found in Washington and Oregon, but it is of record that in Whitman County, a leading wheat county, tenancy in 1925 remained at the high figure of 41.1 per cent.

Tenancy is at best a very indirect line of evidence bearing on the present condition of agriculture. However, no evidence was presented in support of the contention that the increase of tenancy from 1920 to 1925 had the same significance as an increase would have had in an earlier period. On the other hand, the record, as previously pointed out, shows an unusually high rate of farm foreclosures and bankruptcies since 1920, which would indicate that the increase in tenancy resulted in many instances from a reversion from owner to tenant status. Such reversion was caused in part by inability to hold land purchased during the period of high prices. In some cases a voluntary retirement from ownership and reentry into agriculture on a tenant basis occurred. The testimony as to losses incurred by tenants on their operations, referred to elsewhere, indicates that the period since 1920 was also one in which it was difficult to secure the means of becoming an owner, despite the low land prices and the liberal terms offered by large holders of repossessed lands. Ownership in some places had little attraction, even on such terms.

No data are available for the period since 1925. For this reason and because evidence of this character is for the most part merely corroborative of that considered elsewhere, little weight should be assigned to tenancy in reaching a judgment as to the present condition of grain-growing agriculture.

MORE EFFICIENT FARMING; INCREASED DIVERSIFICATION

More efficient farming, by which presumably is meant more careful, more intelligent, and more sustained planning and execution of farm operations, is not in itself conclusive evidence as to the condition of agriculture. Whether improvement actually results can be tested only in terms of the financial returns, which have been considered elsewhere. As a shortrun proposition, increased efficiency may not contribute materially to the farmer's well being, if when output increases prices tend to fall. Those who achieve the greatest success doubtless better themselves. The effect on the general run of farmers may or may not be beneficial.

Increased diversification, in the sense of adding to the number of major crops, may signify the partial abandonment of relatively unprofitable crops or a desire either to minimize risks or to effect better crop rotation. Diversification which results from adding side lines such as dairy and poultry production may

signify merely the need for a more complete utilization of the farmer's time, or the need for products that can be more quickly turned into money, even if in only small amounts, or it may evidence a reduction of the farmer's standard of living through requiring him to work excessively long hours or through making farm life more self-supporting. It is safe to say that in the period since 1920 many farmers have learned the effects of too exclusive reliance on one crop. Their efforts to better themselves and such success as they have achieved can hardly be considered, however, conclusive evidence of either improvement or present well being.

BANKING EVIDENCE

Evidence drawn from the experience of banking institutions differs from that hitherto considered in being a stage removed from agriculture proper. It may be grouped under three main heads: Bank failures, bank earnings, and the volume of banking operations.

The record as to bank failures in the period since 1921 is generally known. It is shown in the subjoined table for the entire United States and for 11 individual States.

Failures of State, private, and national banks 1920–1928 year ending June 30

State	1920	1921	1922	1923	1924	1925	1926	1927	1928	Total
United States	47	358	396	274	915	542	573	831	484	4,420
Minnesota	1	3	14	11	76	46	62	83	42	339
Iowa	2	17	9	17	59	68	92	97	70	431
North Dakota	2	54	13	22	147	37	40	49	39	403
South Dakota	1	3	5	11	134	39	56	47	10	306
Nebraska	2	19	24	19	27	12	25	23	48	199
Kansas	2	4	17	17	33	14	23	37	36	183
Oklahoma	1	11	41	18	76	16	19	28	17	227
Montana	------	11	19	38	91	12	12	6	1	190
Idaho	------	16	12	14	4	12	3	7	2	70
Washington	------	6	6	5	10	6	5	4	------	42
Oregon	------	3	8	4	4	3	1	12	7	42
Total, 11 States	11	147	168	176	661	265	339	393	272	2,432
Percentage of United States total	23	41	42	64	72	49	59	47	56	55

The contrast between this showing and that of preceding periods is very marked. The record indicates that in the years 1900–1919, there were in all 10 failures in Iowa, 3 in Kansas, 14 in Nebraska, 27 in North Dakota, and 41 in South Dakota. In Massachusetts and New Jersey, cited as representative industrial States, there were 10 and 6 failures, respectively in 1900–1919, compared with 9 in Massachusetts and none in New Jersey from 1920–1925.

Bank failures in the 11 States above began to be conspicuous in 1921, when they numbered 147, increased slightly in 1922 and 1923, reached a peak of 661 failures in 1924, then dropped to 265, rose to 339 in 1926 and to 393 in 1927, falling to 272 in the year ended June 30, 1928. Variations from this general trend are particularly Minnesota, Iowa, and Kansas, where the peak occurred in 1927, and Nebraska, where the peak occurred in 1928. The 11 States accounted in 1924 for 72 per cent of the total failures of the country and thereafter for from 47 to 59 per cent of the total.

More comprehensive information was put in the record for bank suspensions. The relation between suspensions and failures is roughly indicated by the fact that from January 1, 1921, to December 31, 1927, there were in the country at large 4,513 suspensions, while from July 1, 1921, to June 30, 1928, a period of equal length, 4,015 failures were reported.

In the United States as a whole the peak in suspensions came in 1926. The distribution by years and sections is as follows:

Section	1921	1922	1923	1924	1925	1926	1927	1928 [1]	Total
New England	7	2	3	1	2	.....	1	.....	16
Middle Atlantic	8	5	8	8	8	6	10	1	54
East north-central	29	17	31	39	34	67	91	31	339
South Atlantic	101	55	59	75	102	206	93	44	735
East south-central	12	15	10	23	21	25	30	9	143
West north-central	145	99	302	401	366	523	308	148	2,222
West south-central	108	80	86	92	71	86	88	26	637
Mountain	80	67	139	121	56	31	19	7	520
Pacific	22	16	12	17	12	12	22	3	116
Total	502	354	650	777	612	956	662	269	4,782

[1] To June 30.

In the west north-central States, where suspensions were so conspicuous, the peak came in 1926, but in the west south-central group 1921 was the highest year, and in the mountain States, 1923. There is, however, a lag of indeterminate length to allow for, and of course each succeeding year of failures reduces the number of banks subject to failure in the future.

The deposits of suspending banks followed much the same course. The peak year in each of the four sections was identical with that given above. The aggregate of the deposits of banks suspending during the period from January 1, 1921, to June 30, 1927, was as follows:

West north central	$537,175,000
West south central	164,855,000
Mountain	151,152,000
Pacific	55,206,000
Total	908,388,000
United States	1,510,041,000
Ratio (per cent)	69.3

While it is generally understood that many banks were saved from failure by assessments against the stockholders, no specific data were presented on this subject.

The evidence as to recoveries by depositors through liquidation was of rather limited extent. In South Dakota recoveries were stated to have reached nearly 50 per cent in 1927; in Wisconsin an average loss of 20 per cent was stated by the banking commissioner to be "very conservative"; in Washington recovery through liquidation was put in 1928 at about 70 per cent.

What is the bearing of this recital of bank failures on the condition of agriculture? Use of such evidence carries the implication that banks failed because agriculture failed. There is abundant indication that the condition of agriculture contributed directly and unmistakably to this record of failures. With the drop and continued low level of agricultural prices and with heavy losses on inventory, particularly in the livestock industry, came inability to meet short-term indebtedness at the banks and withdrawals of deposits to pay running expenses. The mortgages which the banks held or came to require to secure themselves in turn declined greatly in value as land prices fell, and a large amount of "other real estate" found its way onto the banks' books as the result of foreclosures or voluntary surrenders by mortgagors. The process is so generally understood as not to require more detailed description.

It is urged, however, that factors other than the condition of agriculture contributed to the distressed condition of the banks in western territory. There is reason for agreeing that such was the case. But first, how far were the banks which failed identified with agriculture?

There are several ways of demonstrating that the banks which encountered difficulties were preponderantly small banks serving an agricultural clientele. The following is perhaps the simplest approach. Of the 1,056 suspensions which occurred in the Middle Western, Western, and Pacific States in the years 1924 and 1925, 456 took place in places of less than 500 population, 769 in places of less than 1,500 population, and 950, or 90 per cent, in places of less than 5,000 population. Livestock and other branches of agriculture contributed to this result as well as did the grains. In particular localities, droughts or other adverse weather conditions proved to be decisive factors, while in other instances favorable crop condition made it possible to postpone the threatened insolvency. Banks serving so exclusively a single industry were, of course, peculiarly vulnerable to adverse conditions of any character.

Testimony of State banking commissioners and others well informed as to banking conditions places no small part of the responsibility for the distress of the banks on bank management itself. Too many banks came to be chartered, sometimes under the encouragement of lax State banking laws; the banks were not only excessive in number but predominantly of such small size, with so little capital, as to make them weak institutions under any condition; inexperienced officials were placed in charge of many of them; and banking was carried on in many instances along lines which, by any reasonable standard, can not be said to have been conservative. Poor judgment frequently was shown in making loans, and speculative activities were sometimes encouraged by the banks themselves. To a minor extent dishonest practices were a contributing factor. Changes in the demand for the services of rural banks resulting from the rise of newer Government credit agencies or from the enlargement of the territory which the stronger and larger banks can reach with the increased provision of good roads probably contributed in only minor degree to the condition under discussion.

Though by no means all of the banks which failed were comparatively new institutions, or small in size, or operated by inexperienced officials, it can reasonably be concluded that poor banking was in large measure responsible for the breakdown which occurred. Even a slight decline in the condition of agriculture would have proved difficult to a great many of the banks. This conclusion, while helping to explain the unusual record of failures in the period since 1921, does not absolve agriculture from a large share of the responsibility. The condition of agriculture became such as to put to a severe test even the soundest type of banking organization.

What conclusion can be reached on the basis of bank failures as to the present condition of agriculture? The peak year in bank failures in the 11 States hitherto indicated came in 1924, but bank suspensions in the four western groups of States as a whole reached their peak in 1926, with 1924 only slightly below it. Bank failures and suspensions have continued to occur, however, in excessive degree, even after the elimination of great numbers of the weaker banks. Though allowance must be made for the time which intervenes between the occurrence of conditions leading to failure and the actual recognition of insolvency, the record of sustained failures and suspensions in recent years is indicative of the fact that agriculture is still undergoing a process of liquidation. This process appears to have been more nearly completed in the

Mountain and Pacific States than elsewhere in western territory, with such States as Minnesota, Iowa, North Dakota, South Dakota, Kansas, and Nebraska still recording large numbers of failures or suspensions.

The banking evidence so far reviewed serves, however, more to throw light on what has happened in agriculture than to indicate whether any improvement in the agricultural situation has occurred in recent years. Other phases of banking must be looked to for evidence of this character.

Testimony as to the earnings of banks in recent years was offered for only the national banks outside of the reserve cities. No general method of measuring the earnings of the small rural banks, usually operating under State charter, is possible from the record. The current net earnings of the national banks in 1916, the first year of record, in 1920, the peak year of the war and postwar period, in 1924 or other year of lowest postwar earnings, and for the year ending June 30, 1928, are as follows (in thousands of dollars):

	Years ended June 30—			
	1916	1920	1924	1928
West north-central:				
Minnesota	$3,088	$4,001	$2,667	$3,357
Iowa	3,867	4,866	[1] 2,550	3,160
Missouri	1,053	1,461	[2] 1,069	1,127
North Dakota	1,459	962	261	1,107
South Dakota	1,168	1,450	578	991
Nebraska	1,902	2,250	[3] 1,218	1,385
Kansas	2,401	3,125	1,920	2,515
Total	14,938	18,115	----	13,642
West south-central:				
Arkansas	850	1,571	[4] 1,238	1,323
Louisiana	549	1,653	894	1,910
Oklahoma	3,122	4,353	[3] 2,076	3,499
Texas	7,562	12,155	[3] 7,092	9,382
Total	12,083	19,732	----	16,114
Mountain	6,857	8,295	[3] 4,166	----
Pacific	5,747	10,534	[3] 7,775	11,239

[1] 1926. [2] 1922. [3] 1925. [4] 1921.

Difficulties in the interpretation of this table arise from the varying number of banks whose earnings are recorded, from the fact that it was the stronger banks which survived, and from changes in the general level of prices. Also the banks represented serve a nonagricultural as well as an agricultural clientele. Certain general trends may be mentioned, however.

Earnings in 1920 in the four regions indicated were approximately 43 per cent greater than they were in 1916. In the lowest year thereafter they sank in 8 out of the 11 individual States below the 1916 level. In 9 out of the 11 States the lowest earnings occurred in or before 1924, with Nebraska's low year in 1925 and Iowa's in 1926. In the Mountain and Pacific groups as a whole 1925 was the lowest year. Improvement dating back from two to seven years has brought the 1928 earnings above the 1916 level in all States but Iowa, North Dakota, South Dakota, and Nebraska, but, so far as information is available, only in the Pacific group (barring North Dakota, whose 1920 earnings were below those of 1916), were the 1928 earnings above those of the year 1920. While differences in the number of banks and the fact that the weaker banks have been eliminated must be allowed for, it is reasonable to

conclude that the current earnings of national banks in western territory outside of the reserve cities have shown substantial recovery in recent years. This conclusion is reenforced by the large reduction of the general price level since the forepart of 1920. However, as will be indicated, these do not represent earnings distributable as dividends or available for additions to surplus.

Similar improvement throughout the year 1926, the last year for which data have been made available, is shown in the ratio of current net earnings to capital and surplus. In the west north central States a high of 15.69 per cent was reached in 1919, with successive declines thereafter to 1924, and recovery in 1925 and 1926 to 10.21 per cent. In the west south-central group of States 1920 was the high year with earnings of 18.59 per cent; declines occurred through 1923, with recovery since to 13.83 in 1926. However, net losses charged off by these national banks continued to be large in 1928 and very much in excess of what they were in the war period. There have been, however, moderate declines in the losses charged off since 1925, generally the peak year in the west north-central States and since 1922, the peak year in the west south-central group. In the Pacific group, however, 1928 showed larger losses written off than in any year since 1916, the earliest year for which this information is of record. The ratio of net additions to profits to capital and surplus, therefore, continues throughout western territory below that of the years 1916–1920, though here also substantial improvement is shown over the low years of 1921–1924.

Attempts were made to throw light on the condition of the banks by noting changes in the amount of interbank borrowing. During the period of severe stress among the banks the volume of such borrowing ran sharply up. It has, however, been very greatly reduced, though in some instances by conversion after the liquidation of the debtor bank rather than by outright payment. This line of evidence is not conclusive, however, and at best is only corroborative of that considered elsewhere.

An effort was made to show the present condition of agriculture by noting the volume of banking transactions. This was measured principally by the item "debits to individual accounts." Data on this item are rather general in character, being given on the record for only the 141 reserve cities of the country. Attention was called by a shipper witness to the fact that such debits aggregated 16.2 billions in 1920 in the reserve cities of the Kansas City Federal-reserve district and to only 14.8 billions in 1926, compared with 23.1 billions and 31 billions in the Boston district. In the Minneapolis district the 1920 total was 8.5 billions and in 1926, 8.3. The base period is one of exceptional volume of banking business. It is impossible to state what part of these debits represents agricultural, including livestock, transactions. Also, an increased aggregate, so far as agriculture has contributed to it, might arise either from an increased volume or an increased price of agricultural products, neither of which by itself would necessarily signify improvement of farm conditions.

An index of debits to individual accounts on a 1919 base indicates that in the reserve cities, after the exclusion of New York City, debits to the middle of 1927 were 31.2 per cent above the base compared with a decline of 3.8 per cent in the west north-central States, and with increases of 23.4 per cent in the west south-central States, of 8.6 per cent in the Mountain States, and of 72.9 per cent in the Pacific States. In all sections substantial improvement is shown over the low years 1921 and 1922, as is also true of the individual States of record except South Dakota and Nebraska. It is to be borne in mind that the

base period used in this index is 1919, and also that a large decline has occurred in the level of prices entering into financial transactions.

Statistics of net demand deposits are given for banks situated in cities of less than 5,000 population which are members of the Federal reserve system. For the same four groups of States elsewhere shown, changes have occurred as follows:

Section	Net demand deposits (billions)		
	Apr. 25, 1923	Apr. 22, 1925	Apr. 11, 1928
West north central	$260.3	$261.4	$242.9
West south central	253.7	300.0	289.9
Mountain	88.8	80.1	87.7
Pacific	135.4	130.1	121.5
United States	1,600.3	1,637.9	1,655.9

These statistics are confined to member banks and therefore leave out the greater number of State institutions. Changes in the value of the dollar must be considered, and for full interpretation considerable analysis, not here undertaken, of how these deposits were created is required. Such analysis would require more information as to the item "loans and discounts" than is of record. Only in the Mountain States is the 1928 figure over that of 1925. In the country as a whole, however, such small banks showed, comparing like months, small but erratic and moderate increases from 1923 on. There was some testimony to the effect that people are carrying more currency than formerly, but no concrete information was offered. The figures given cover such broad areas as not to reveal local situations where the trend may differ from the general one.

Time deposits may also be given for member banks situated in places of less than 5,000 population.

	Time deposits (billions)		
	Apr. 25, 1923	Apr. 22, 1925	Apr. 11, 1928
West north central	$305.0	$308.9	$248.5
West south central	47.8	57.0	60.4
Mountain	55.1	50.4	57.1
Pacific	74.1	85.2	91.8
United States	1,471.7	1,691.1	1,958.1

Except in the west north-central States, improvement is shown in 1928 over both 1925 and 1923. The improvement is less, however, than that shown for the country as a whole. Limitations of the data are generally similar to those indicated in the discussion of demand deposits.

Related to the item of deposits is that of bank investments. An increase of the latter is said to signify that deposits have outrun the local demand for loans. Satisfactory demonstration that this is true was not provided in the case of the banks serving principally an agricultural clientele. Investments of all banks in western territory in 1926 showed a considerably greater percentage increase over 1920 than did those of banks in the country as a whole, though with some decline thereafter. No separation is made between investments

made possible through the deposits of agriculturists and of others. Also, the fact that banks' funds are available for investment may signify an excess of funds over normal demand, or it may signify an inability to borrow money owing to the lack of required security or to contraction of operations. No measurement of the relative importance of these two forces has been offered. Indication has been given elsewhere, however, that the farmer's credit generally speaking, is still below normal. Loans and discounts showed continuing weakness in the west north-central States from the high year 1920 to 1926; in the west south-central States they had recovered in that year to about 88 per cent of the peak; in the Mountain States to 65 per cent of the peak; and in the Pacific States they were 35 per cent over the peak. But the figures available relate to all banks and can not be separated between agricultural and nonagricultural loans or between those which arise from grain, from livestock, and from other branches of farming operations.

CONCLUSIONS

Various indices of the condition of agriculture have been reviewed. Some of these have related to the industry as a whole and others more specifically to grain agriculture. While all indicate that there has been substantial, though not complete, recovery from the effects of the industry's war and post-war experiences, those bearing more directly on the condition of the grain producer give evidence of inability to hold all the gains made during the period of four or five years following the low year 1921–22.

Agriculture as a whole is carrying a heavier burden of interest and taxes than it did before the war and shares with other classes of American society the desire to maintain a standard of living which has risen in considerable measure in the last decade or so. Its indebtedness was incurred during the period of high prices for purposes previously indicated or was accumulated as the result of the conditions which followed the collapse of agricultural prices. Some of this indebtedness has been wiped out by the process of foreclosure and bankruptcy, while many farmers never became involved in it. At the present time this burden is therefore unevenly distributed. Where the losses had not been fully taken earlier, foreclosures and bank failures were still running at an unusual rate at the time of the hearings.

The depressant factor in grain agriculture, operating particularly with respect to wheat and oats, is redundancy of supplies. Wheat in the crop year 1927–28 had 90 per cent of its pre-war purchasing power, in July, 1928, 85 per cent, and in September, 69 per cent. There is no immediate prospect of reduction of supplies or of significant expansion of demand. The competition of newer domestic and foreign sources of supply, some of which use modern power equipment in an effort to achieve low costs and operate under more favorable conditions, is particularly felt by the older regions of wheat production. Falling demand has contributed largely to weakness in the position of the oats producer. Corn has been more successful in maintaining its recovery, owing to improvement in the livestock industry.

Not all of the difficulties of grain agriculture are attributable to heavy interest and tax charges and redundant supplies. Adverse climatic conditions have played a large part in some years, and in some regions declining fertility is a factor of considerable importance.

The evidence indicates that, taken as a whole, there is depression in the grain-producing industry.

APPENDIX D

Statement of Present and Prescribed Rates

[In cents per hundred pounds]

Proportional rates

	Present (wheat)	Prescribed (wheat and coarse grains)
To Duluth from—		
Minneapolis	6.5	4.5
Sioux City	17.5	13
Omaha	17.5	16
Kansas City	19	20
To Minneapolis from—		
Sioux City	16.5	8.5
Omaha	16.5	11.5
Kansas City	17.5	15.5
To Chicago from—		
Minneapolis	13	11
Sioux City	17.5	15
Omaha	17.5	15
Kansas City	17.5	15
To St. Louis from—		
Sioux City	17.5	16
Omaha	13.5	13
Kansas City	13.5	9
To Kansas City from—		
Omaha	8	6
To Omaha from—		
Sioux City	4.5	3
To Memphis from—		
Omaha	25	22
Do	[1] 22.5	22
To Memphis from—Continued.		
Kansas City	24	16
Do	[1] 21.5	16
St. Louis	11.5	9
Do	[1] 9	9
To New Orleans from—		
Memphis	17	10
St. Louis	[2] 28.5	19
Kansas City	[3] 41	26
Omaha	[3] 42	32
To Texas Group 3 from—		
Kansas City	37	21
Omaha	45	27
St. Louis	37	23
To Louisiana Group 3 from—		
Kansas City	41	[4] 26
Omaha	45	[4] 32
St. Louis	37	[4] 23
To Little Rock from—		
Kansas City	26.5	16
Omaha	31	22
St. Louis	23.5	10
To Texarkana from—		
Kansas City	31	16
Omaha	35	22
St. Louis	31	16

[1] For the Southeast.
[2] Domestic.
[3] West of the Rock Island from Randolph south through Ruston Alexandria, and Eunice 3 cents less.
[4] On and east of above line 4 cents less.

Export rates

	Present	Prescribed
Kansas City to Texas Group 3	23.5	[1] 21
Omaha to Texas Group 3	24.5	[1] 27
Omaha to Montreal	[2] 31.5	[3] 29
Kansas City to Montreal	[2] 31.5	[3] 29
Omaha to Baltimore	38.5	31
Kansas City to Baltimore	38.5	31
Omaha to New Orleans	24.5	27
Kansas City to New Orleans	23.5	21
St. Louis to Baltimore	25	22
St. Louis to New Orleans	11	14
Chicago to Baltimore	21	16
Central Illinois to Baltimore	32.5	27.5
Central Illinois to New Orleans	22.5	25.5

[1] Also the domestic rates.
[2] Through charge to Montreal is made by adding to the proportional rate of 17.5 cents to Chicago lake charges, not subject to the interstate commerce act, said to approximate 14 cents beyond.
[3] Through charge to Montreal will be made by adding to the reduced proportional rate of 15 cents to Chicago lake charges, not subject to the interstate commerce act, said to approximate 14 cents beyond.

Flat rates (California to Arizona, New Mexico, and El Paso, Tex.)

To—	From Weed		From Marysville		From Sacramento	
	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Yuma, Ariz.	60.5	46.5	44.5	38.5	41	37
Phoenix, Ariz.	63.5	49	57.5	41	57.5	39.5
Maricopa, Ariz.	63.5	51.5	52.5	44.5	52.5	43
Tucson, Ariz.	63.5	54.5	57.5	48	57.5	46
Bowie, Ariz.	63.5	57.5	59	51.5	59	50
Kingman, Ariz.	68.5	44.5	58	37	59	35
Ash Fork, Ariz.	68.5	48.5	59	41	59	39.5
Flagstaff, Ariz.	68.5	50	60	43	60	41
Albuquerque, N. Mex.	68.5	61	68	54.5	68	53
Lordsburg, N. Mex.	63.5	59	59	52.5	59	51.5
El Paso, Tex.	63.5	63.5	59	57.5	59	56.5

Flat rates (from California to California)

To—	From Sacramento			From Guinda			From Woodland		
	Present wheat	Present coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Los Banos	14.5	14.5	13	31	31	15	20.5	20.5	13.5
Merced	16	16	12.5	31	31	15	19	19	13
Fresno	18.5	18.5	14.5	34.5	34.5	17.5	22	22	15.5
Coalinga	22	22	17.5	38	38	19.5	26	26	18.5
Tulare	20.5	20.5	16	36.5	36.5	19	24	24	17
Porterville	22	22	17	38	38	20	25.5	25.5	18
Bakersfield	23	23	18.5	38.5	38.5	21	26.5	26.5	19.5
Buttonwillow	23	23	20	39	39	22.5	30	30	20.5
Santa Cruz	22.5	22.5	14.5	35	35	14.5	22.5	22.5	14
Salinas	25.5	25.5	15.5	37	37	16	29	29	15
San Luis Obispo	29	29	20	40.5	40.5	21	32.5	32.5	20
Santa Barbara	34.5	34.5	24	46	46	25	35	35	24
Los Angeles	31.5	31.5	25	46	46	26.5	35	35	25.5
Santa Ana	34	34	26	49.5	49.5	28	35	35	26.5
San Bernardino	35.5	35.5	26.5	57.5	57.5	28.5	39	39	27
Calexico	41	41	31.5	60.5	60.5	34	44.5	44.5	32

To—	From Marysville			From Chico			From Cole		
	Present wheat	Present coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Los Banos	20.5	20.5	14.5	25	25	16	39.5	39.5	24
Merced	19	19	14.5	27	27	16	39.5	39.5	24
Fresno	22	22	16	27	27	17.5	41	41	25.5
Coalinga	26	26	19.5	36.5	36.5	21	46.5	46.5	28.5
Tulare	24	24	18	33.5	33.5	19.5	45	45	27
Porterville	25.5	25.5	19	33.5	33.5	20	45	45	28
Bakersfield	26.5	26.5	20	33.5	33.5	21.5	45	45	29
Buttonwillow	27	27	21	37	37	23.5	47.5	47.5	29.5
Santa Cruz	28	28	15.5	31.5	31.5	17	45	45	25
Salinas	31	31	16.5	35.5	35.5	18	46	46	25.5
San Luis Obispo	32.5	32.5	21	38	38	23.5	46	46	29.5
Santa Barbara	35	35	25.5	38	38	27	46	46	33
Los Angeles	35	35	26	38	38	27	46	46	34
Santa Ana	35	35	27	38	38	28.5	55	55	35
San Bernardino	39	39	28	41.5	41.5	29	50	50	35.5
Calexico	44.5	44.5	32.5	50.5	50.5	34.5	56.5	56.5	41

California to San Francisco Bay ports

From—	To San Francisco [1]		To Port Costa [1]	
	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains
Bakersfield	23	19.5	23	19
Nord	19	14.5	17.5	13.5
Nelson	19	14	17.5	13
Tulare	21	17	20.5	16
Exeter	21	17.5	20.5	16.5
Stratford	21	17	21	16
Coalinga	22	17.5	22	17
Fresno	19.5	15.5	18.5	14.5
Cole	28	22	28	21
Merced	17	13	16	12.5
Dorris	32.5	22.5	32.5	21
Tracy	7.5	10	5.5	9
Modesto	12.5	12	11.5	11
Oakdale	11.5	12	10.5	12
Stockton	7.5	11.5	7.5	10
Lodi	10	12	7.5	11
Valley Springs	17.5	13	16.5	12
Fruto	19	14.5	17.5	13
Galt	10.5	12.5	9	11
Red Bluff	20	15.5	18.5	14.5
Walnut Grove	10.5	12.5	10.5	11
Sacramento	10.5	11	10	9
Roseville	15	12	13.5	10
Marysville	15.5	13	14	11.5
Colusa	18	13	16.5	12
Knights Landing	14	11.5	12.5	9.5
Josephine	18	12.5	16.5	11
Oroville	17.5	13.5	16	12.5
Chico	19	14.5	17.5	13
Willows	18	13.5	16.5	12.5
Salinas	17.5	12.5	19	13
Princeton	19	13.5	17.5	12.5

[1] Oakland takes same rates as San Francisco, and South Vallejo same as Port Costa.

California to Los Angeles

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Calipatria	22	15.5	Oakdale	21.5	21.5
El Centro	21	16	Tracy	21.5	23
Calexico	25.5	16.5	Huron	21.5	19
Westmoreland	25.5	16	Knowles	21.5	20
Sandia	26.5	16	Salinas	21.5	21.5
Holtville	26.5	16.5	Tres Pinos	21.5	23.5
Milton	21.5	23			

Colorado to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Fowler	50.5	45.5	43	Stratton	41	37	39
Vroman	50.5	45.5	43	Flagler	44.5	40	39.5
Las Animas	46.5	42	42	Limon	50.5	45.5	43
Lamar	44.5	40	41	Peyton	50.5	45.5	43
Timpas	50.5	45.5	43	Brandon	43	38.5	42.5
Delhi	50.5	45.5	43	Haswell	45.5	41	43
Wray	40.5	26.5	38	Olney	50.5	45.5	43
Yuma	47	42.5	39	Sedgwick	48	43	38
Platner	50.5	45.5	43	Proctor	50.5	45.5	43
Hudson	50.5	45.5	43	Orchard	50.5	45.5	43
Longmont	50.5	45.5	43	Kersey	50.5	45.5	43
Fleming	50	45.5	39.5	River Bend	50.5	45.5	43
Ariba	46.5	42	40	Frederick	50.5	45.5	43
Sterling	50	45	43	Koenig	50.5	45.5	43
Keota	50.5	45.5	43	Lucerne	50.5	45.5	43
Cheyenne	50.5	45.5	43	Carr	50.5	45.5	43
Merino	50.5	45.5	43				

Colorado to Missouri River

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Fowler	33	29.5	28	Stratton	23.5	21	24
Vroman	33	29.5	28	Flagler	27	24.5	24.5
Las Animas	29.5	26.5	27	Limon	33	29.5	28
Lamar	27	24.5	26	Peyton	33	29.5	28
Timpas	33	29.5	28	Brandon	25.5	23	27.5
Delhi	33	29.5	28	Haswell	28	25	28
Wray	23	20.5	23	Olney	33	29.5	28
Yuma	29.5	26.5	24	Sedgwick	30.5	27.5	23
Platner	33	29.5	28	Proctor	33	29.5	28
Hudson	33	29.5	28	Orchard	33	29.5	28
Longmont	33	29.5	28	Kersey	33	29.5	28
Fleming	32.5	29.5	24.5	River Bend	33	29.5	28
Ariba	29	26	25	Frederick	33	29.5	28
Sterling	33	29.5	28	Lucerne	33	29.5	29
Keota	33	29.5	28	Koenig	33	29.5	28
Cheyenne	33	29.5	28	Carr	33	29.5	28
Merino	33	29.5	28				

Eastern Colorado transcontinental Groups G and J to New Mexico and El Paso, Tex.

	Present wheat[1]	Present coarse grains[2]	Prescribed wheat and coarse grains		Present wheat[1]	Present coarse grains[2]	Prescribed wheat and coarse grains
Domingo	61	54.5	28.5	Columbus	61	54.5	40
Bernalillo	61	54.5	29	Hachita	61	54.5	40.5
Albuquerque	61	54.5	30.5	Animas	61	54.5	41.5
Belen	61	54.5	31	Rodeo	61	54.5	41.5
San Antonio	61	54.5	32.5	Laguna	61	54.5	32.5
San Marcial	61	54.5	34	Grants	61	54.5	33.5
Engle	61	54.5	35	Baca	61	54.5	34
Las Cruces	61	54.5	37.5	Thoreau	61	54.5	36.5
Berino	61	54.5	38	Perea	61	54.5	35
Hatch	61	54.5	36.5	Gallup	61	54.5	35.5
Deming	61	54.5	38	El Paso, Tex	61	54.5	39.5
Lordsburg	61	54.5	40.5				

[1] Average of present rates of 59 and 63 cents.

[2] Average of present rates of 53 and 56.5 cents.

From eastern Colorado transcontinental Groups G and J to Arizona

	Present wheat[1]	Present coarse grains[2]	Prescribed wheat and coarse grains		Present wheat[1]	Present coarse grains[2]	Prescribed wheat and coarse grains
Chambers, Ariz	61	54.5	37.5	Naco	61	54.5	44.5
Navajo	61	54.5	37.5	Bisbee	61	54.5	45.5
Holbrook	61	54.5	39.5	Douglas	61	54.5	43.5
Winslow	61	54.5	40	Nogales	61	54.5	48
Flagstaff	61	54.5	42.5	Willcox	61	54.5	43
Williams	61	54.5	43.5	Benson	61	54.5	44.5
Seligman	61	54.5	45.5	Tucson	61	54.5	46.5
Kingman	61	54.5	48.5	Casa Grande	61	54.5	48.5
Clarkdale	61	54.5	46.5	McNary	89	82.5	41.5
Prescott	61	54.5	46.5	Ajo	64.5	58	53
Phoenix	61	54.5	49	Clifton	67	60.5	43
Fairbank	61	54.5	45.5	Safford	64.5	58	41.5
Lowell	61	54.5	44.5	Globe	67	60.5	46.5
Curtis	61	54.5	44.5	Miami	67	60.5	47
Patagonia	61	54.5	47	Needles, Calif	61	54.5	48.5

[1] Average of present rates of 59 and 63 cents. [2] Average of present rates of 53 and 56.5 cents.

Colorado to Texas Group 3

	Present wheat	Present coarse grains	Prescribed wheat and coures grains[1]		Present wheat	Present coarse grains	Prescribed wheat and coarse grains[1]
Colorado common points[2]	61	55	49	Planter	61	55	49
Sterling	61	55	49	Limon	61	55	49
Wray	56	50.5	44	Lamar	61	55	49

[1] Combination on Kansas City. [2] Denver, Pueblo, and Trinidad.

From Colorado to Louisiana Group 3, on and east of the Rock Island south through Ruston, Alexandria, and Eunice, including New Orleans [1]

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains[2]		Present wheat	Present coarse grains	Prescribed wheat and coarse grains[2]
Colorado common points[3]	64	57.5	54	Platner	64	57.5	54
Sterling	64	57.5	54	Limon	64	57.5	54
Wray	60	54	49	Lamar	64	57.5	54

[1] West of the line described, 3 cents less.
[2] Combination on Kansas City.
[3] Denver, Pueblo, and Trinidad.

From eastern Colorado transcontinental groups to the Pacific coast [1]

To—	Present wheat	Present coarse grains	Prescribed wheat and coarse grains
North Pacific coast	59	53	53
San Francisco and Los Angeles	[2] 61	[3] 54.5	55

[1] Rates from other eastern transcontinental groups to be revised to maintain existing differentials over Colorado.
[2] Average of present rates of 59 and 63 cents.
[3] Average of present rates of 53 and 56.6 cents.

Idaho to Omaha and Kansas City

	Present wheat and coarse grains	Prescribed wheat and coarse grains [1]		Present wheat and coarse grains	Prescribed wheat and coarse grains [1]
American Falls	51	46	Mackey	52	47
Twin Falls	52	47	Paris	48	43
Mountain Home	54	49	Rexburg	52	47
Caldwell	55	50	Utah common points (Ogden and Salt Lake)	48	43
Montpelier	48	43			

[1] Made by adding to the rates from Denver the differentials over Denver prescribed in *Ogden Grain Exchange* v. *A. & S. R. R. Co., et al.*, 122 I. C. C. 691, Docket 16112. Rates from other points in Idaho and Utah to be related to those from points named herein in the manner required in Docket 16112. Rates from points on the Gilmore & Pittsburgh Railroad should not exceed those from the Butte, Mont., group

Idaho to Texas Group 5, inciuding Houston and Galveston

	Present wheat and coarse grains	Prescribed wheat and coarse grains [1]		Present wheat and coarse grains	Prescribed wheat and coarse grains [1]
American Falls	79	67	Twin Falls	80	68
Mountain Home	82	70	Caldwell	83	71
Pocatello	76	67	Cambridge	98	74
Idaho Falls	80	68			

[1] Combination of proportional rate of 28 cents from Denver to Kansas City, proportional rate of 21 cents from Kansas City to Houston, and arbitraries from Idaho over Denver prescribed in Docket 16112. Other points in Idaho and Utah common points to be 15 cents over Denver in accordance with arbitraries prescribed in that case. Rates from points on the Gilmore & Pittsburgh Railroad to be not higher than from the Butte, Mont., group.

Washington and Idaho, north of Snake River, to Seattle

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Pullman, Wash	24	21	Spokane, Wash	24	21
Palouse, Wash	24	21	Almota, Wash	24	21
Colfax, Wash	24	21	Moscow, Idaho	24	21
Garfield, Wash	24	21	Genesee, Idaho	24	21
Oaksdale, Wash	24	21	Lewiston, Idaho	24	21
Farmington, Wash	24	21	Kendrick, Idaho	24	21
Rosalia, Wash	24	21	Peck, Idaho	24	21
Spring Valley, Wash	24	21	Plummer, Idaho	24	21
Freeman, Wash	24	21	Cottonwood, Idaho	31	23
Thornton, Wash	24	21	Craigmont, Idaho	30	23
Spangle, Wash	24	21	Grangeville, Idaho	31	23
Steptoe, Wash	24	21			

Washington and Idaho, north of Snake River, to Portland

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Pullman, Wash.	24	21	Spokane, Wash.	24	21
Palouse, Wash.	24	21	Almota, Wash.	24	21
Colfax, Wash.	24	21	Moscow, Idaho	24	21
Garfield, Wash.	24	21	Genesee, Idaho	24	21
Oaksdale, Wash.	24	21	Lewiston, Idaho	24	21
Farmington, Wash.	24	21	Kendrick, Idaho	24	21
Rosalia, Wash.	24	21	Peck, Idaho	24	21
Spring Valley, Wash.	24	21	Plummer, Idaho	24	21
Freeman, Wash.	24	21	Cottonwood, Idaho	31	23
Thornton, Wash.	24	21	Craigmont, Idaho	30	23
Spangle, Wash.	24	21	Grangeville, Idaho	31	23
Steptoe, Wash.	24	21			

Idaho to Portland

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Weiser	30	30	24	Bancroft	47	47	36
Mesa	44	44	26.5	Montpelier	47	47	37.5
Boise	35	35	27	Pocatello	44	44	31
Twin Falls	44	44	34	Idaho Falls	44	44	36
Burley	43	43	32.5	Pirie	45	45	36.5
Shoshone	42	42	31	Ashton	46	46	37.5
Fairfield	44	44	32.5	Tetonia	47	47	38.5
American Falls	44	44	34	Mackey	47	47	38

Southern Idaho and Utah common points to California

From—	To San Francisco		To Los Angeles		To Weed		To Fresno		To Bakersfield		To Santa Barbara	
	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains
Bancroft	50	41.5	51.5	42.5	54	45	53	43.5	55	47	59	51
St. Anthony	52	44	52	48	56	45.5	55	44	57	47.5	61	52.5
Twin Falls	45	34.5	52	45.5	50	39	48	37.5	50	41.5	54	46
Caldwell	55.5	42.5	56.5	49.5	60.5	47.5	58.5	45.5	60.5	49	64.5	53.5
Cambridge	71.5	45	71.5	51.5	65.5	50	64.5	48.5	76.5	51.5	80.5	56
Weiser	56.5	44	58	50.5	60.5	49	59.5	47.5	61.5	50.5	65.5	55
Pocatello	50	40.5	50	42.5	54	43	53	41.5	55	45	59	47.5
Montpelier	51.5	42.5	51.5	44	55.5	47	54.5	45	56.5	48	60.5	53
Mountain Home	54.5	47	54.5	48	58.5	50.5	57.5	49	59.5	51.5	63.5	56
American Falls	50	38	50	43	54	42.5	53	40.5	55	44.5	59	49
Utah common points	46	38	46	36.5	50	43	49	40.5	51	44	55	39.5

Southern Idaho and Utah to Arizona, New Mexico, and Needles, Calif.

To—	From Twin Falls		From Caldwell		From Pocatello		From Mountain Home		From Ogden, Utah	
	Present wheat and coarse grians	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains
Yuma	58.5	54.5	63	58.5	56.5	51	61	56.5	52.5	46
Maricopa	63.5	59	68	63.5	61.5	55.5	66	61	57.5	48.5
Tucson	65	61.5	69.5	66	63	58.5	67.5	64	59	54.5
Bowie	68.5	65.5	73	69.5	66.5	61.5	71	67	62.5	57.5
Kingman	60	52	64.5	56.5	58	48.5	62.5	54.5	54	43.5
Ash Fork	62.5	55.5	67	60	66.5	52	65	57.5	56.5	48
Phoenix	62.5	55.5	67	60	60.5	52	65	58	56.5	48.5
Flagstaff	63.5	57.5	68	61.5	61.5	54	66	59	57.5	49.5
Allantown	68.5	62.5	73	66.5	66.5	58.5	71	64	62.5	54.5
Prescott	63.5	57	68	61	61.5	53	66	58.5	57.5	49
Nogales	68.5	63.5	73	68.5	66.5	60.5	71	66	62.5	56.5
Holbrook	68.5	60	73	64.5	66.5	57	71	62.5	62.5	52.5
Douglas	68.5	65.5	73	70	66.5	61.5	71	68	62.5	58
Benson	68.5	63.5	73	68	66.5	60	71	65.5	62.5	55.5
Mesa	65	58.5	69.5	63	63	55	67.5	60.5	59	51
Bisbee	68.5	65.5	73	69.5	66.5	61.5	71	67	62.5	57.5
Williams	63.5	56.5	68	60.5	61.5	52.5	66	58.5	57.5	49
Needles, Calif	60	50	64.5	54.5	58	46.5	62.5	52.5	54	41.5
Lordsburg, N. Mex	71	66.5	75.5	69.5	69	61.5	73.5	67	65	59

Southern Idaho and Utah to Arizona, New Mexico, and Needles, Calif.

To—	From St. Anthony		From Bancroft		From American Falls		From Weiser	
	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Prescribed wheat and coarse grains
Yuma, Ariz	58.5	53	58	51	56.5	51.5	64.5	60
Maricopa, Ariz	63.5	58	63	55.5	61.5	56.5	69.5	65.5
Tucson, Ariz	65	61	64.5	58	63	58.5	71	68
Bowie, Ariz	68.5	64	68	61.5	66.5	62.5	74.5	71.5
Kingman, Ariz	60	51.5	59.5	48.5	58	49.5	66	58
Ash Fork, Ariz	62.5	54.5	62	52	60.5	52.5	68.5	61.5
Phoenix, Ariz	62.5	55	62	52	60.5	52.5	68.5	61
Flagstaff, Ariz	63.5	56.5	63	54	61.5	54.5	69.5	63.5
Allantown, Ariz	68.5	61	68	58.5	66.5	59	74.5	68
Prescott, Ariz	63.5	55.5	63	53	61.5	54	69.5	62.5
Nogales, Ariz	68.5	63	68	60	66.5	61	74.5	69.5
Holbrook, Ariz	68.5	59	68	57	66.5	57.5	74.5	66
Douglas, Ariz	68.5	64.5	68	61.5	66.5	63	74.5	71.5
Benson, Ariz	68.5	62.5	68	60	66.5	60.5	74.5	69
Mesa, Ariz	65	57.5	64.5	55	63	55.5	71	64.5
Bisbee, Ariz	68.5	64	68	61.5	66.5	62.5	74.5	71
Williams, Ariz	63.5	55.5	63	52.5	61.5	54	69.5	62.5
Needles, Calif	60	49.5	59.5	46.5	58	47	66	56.5
Lordsburg, N. Mex	71	66	70.5	63	69	64	77	72.5

Idaho and Utah to Louisiana Group 5, on and east of the Rock Island south through Ruston, Alexandria, and Eunice, including New Orleans[1]

	Present wheat and coarse grains	Prescribed wheat and coarse grains[2]		Present wheat and coarse grains	Prescribed wheat and coarse grains[2]
American Falls, Idaho	82	72	Twin Falls, Idaho	83	73
Mountain Home, Idaho	85	75	Caldwell, Idaho	86	76
Pocatello, Idaho	82	72	Cambridge, Idaho	98	79
Idaho Falls, Idaho	83	73	Ogden, Utah	79	69

[1] West of the line described 3 cents less.

[2] Combination of proportional rate of 28 cents from Denver to Kansas City, proportional of 26 cents from Kansas City to Louisiana Group 3, and arbitraries over Denver prescribed in the Ogden Grain Exchange case, 122 I. C. C. 691. Rates from other groups in Idaho and Utah to be differentially related to the prescribed rates according to the formula set forth in the Ogden Grain Exchange case. Points on the Gilmore & Pittsburgh Railroad shall not exceed those from the Butte, Mont., group.

Southern Idaho to Seattle

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Weiser	33	33	26	Bancroft	50	50	37
Mesa	47	47	28.5	Montpelier	50	50	39.5
Boise	38	38	29	Pocatello	47	47	36
Twin Falls	47	47	36	Idaho Falls	47	47	38
Burley	46	46	34.5	Pirie	48	48	38.5
Shoshone	45	45	23	Ashton	49	49	39.5
Fairfield	47	47	34.5	Tetonia	50	50	40.5
American Falls	47	47	36	Mackey	50	50	40

Iowa to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Storm Lake	23	20.5	23	Clarinda	22.5	20.5	23
Fort Dodge	21	19	21	Mason City	22.5	20.5	20
Hawarden	26.5	24	25	Centerville	20.5	18.5	19
Estherville	23	20.5	24	Red Oak	23	20.5	23
Sheldon	24.5	22	24	Creston	22.5	20.5	21.5
Waterloo	19.5	17.5	18	De Witt	17	15.5	13.5
Algona	21.5	19.5	22	Chariton	20.5	18.5	19.5
Marshalltown	19.5	17.5	18	Stanwood	18	16	14.5
Indianola	20.5	18	20.5	Rock Rapids	25.5	23	25
Cedar Rapids	19.5	17.5	18	Stockton	14.5	13	15
Shenandoah	24	21.5	24	Low Moor	14.5	13	13
Calmar	20.5	18.5	18	Des Moines	20.5	18.5	20.5

Iowa to Minneapolis

	Present wheat	Present coarse grains	Prescribed wheat and course grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Storm Lake	18	16	16	Waterloo	17.5	15.5	16
Sheldon	17	15.5	15.5	Cedar Rapids	19	17	17.5
Clarinda	23	20.5	24	Muscatine	19.5	17.5	19.5
Fort Dodge	17	15.5	15.5	Calmar	18	16	14
Creston	23	20.5	24.5	Sac City	21.5	19.5	19.5
Chariton	21.5	19.5	19	Spencer	17	15.5	14.5
Algona	17	15.5	14	Carroll	20.5	18.5	17.5
Mason City	15.5	14	13	Estherville	16.5	15	13.5
Iowa Falls	17.5	15.5	15	Sioux City (local)	21	19	18
Marshalltown	18	16	16.5				

Iowa to Omaha

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Manning	10.5	9.5	9	Clarinda	10	9	9
Storm Lake	15.5	14	14	Centerville	16.5	15	15.5
Fort Dodge	13.5	12	13	Creston	12	11	11
Cherokee	16.5	15	15.5	Chariton	14.5	13	13.5
Sheldon	14.5	13	14.5	Rock Rapids	18	16	20.5
Algona	16.5	15	15	Boone	14	12.5	13
Hawarden	13.5	12	13	Merrill	13.5	12	13
Luverne	16.5	15	16	Onawa	19	17	17.5
Shenandoah	9.5	8.5	8				

Iowa to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and course grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Storm Lake	24	21.5	20	Shenandoah	16.5	15	14
Fort Dodge	21.5	19.5	19	Clarinda	17	15.5	13.5
Cherokee	24.5	22	21.5	Centerville	16.5	15	15.5
Sheldon	22.5	20.5	20.5	Creston	16.5	15	14
Algona	24.5	22	21	Chariton	16.5	15	15.5
Indianola	16.5	15	16.5				

Iowa to St. Louis

	Present wheat	Present coarse grains	Prescribed wheat and course grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Storm Lake	25	22.5	24	Shenandoah	22.5	20.5	22
Fort Dodge	23	20.5	23	Cedar Rapids	21.5	19.5	19
Dixon	19.5	17.5	17.5	Clarinda	22	20	21
Iowa City	20	18	18	Waterloo	21.5	19.5	20.5
Sheldon	26.5	24	26	Centerville	19.5	17.5	16.5
Ames	22.5	20.5	21	Webster	21.5	19.5	19
Algona	24.5	22	23	Creston	22	20	20.5
Ruthven	25	22.5	24	Chariton	19.5	17.5	19
Indianola	20.5	18.5	20	Rock Rapids	27.5	24.5	26
Waverly	22.5	20.5	21	Marshalltown	21.5	19.5	20.5

Iowa to Texas Group 3, including Galveston and Houston

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Storm Lake	54.5	49	41.5	Shenandoah	47	42.5	35
Fort Dodge	52	47	40.5	Clarinda	47.5	43	34.5
Cherokee	55	49.5	42.5	Centerville	47	42.5	36.5
Sheldon	53	48	42	Creston	47	42.5	35
Algona	55	49.5	40.5	Chariton	47	42.5	36.5
Indianola	47	42.5	37.5				

Kansas to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Olathe	27	24.5	24	Great Bend	37	33.5	32
Ottawa	29.5	26.5	25.5	Kinsley	37	33.5	32
Fort Scott	29.5	26.5	26	Dodge City	38	34.5	33
Oswego	31	28	28	Wakeeney	37.5	34	33
Eureka	34.5	31.5	28.5	Satanta	38.5	35	33
Wichita	35.5	32.5	30	Grainfield	38	34.5	33
Beloit	35.5	32.5	30	Syracuse	38	34.5	37
Salina	35.5	32.5	30	Goodland	38	34.5	37
Concordia	35	32	30	Elkhart	39	35.5	37
Hutchinson	36.5	33.5	31	Kansas City (local)	23.5	21	24
Ellsworth	36.5	33.5	31				

Kansas to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Olathe	9.5	8.5	7	Ellsworth	19	17	16
Ottawa	12	11	8.5	Great Bend	19.5	17.5	17
Fort Scott	12	11	11	Kinsley	19.5	17.5	17
Oswego	13.5	11.5	13	Dodge City	20.5	18.5	18
Eureka	17	15.5	13.5	Wakeeney	20	18	18
Wichita	18	16	15	Satanta	21	19	18
Beloit	18	16	15	Grainfield	20.5	18.5	18
Salina	18	16	15	Syracuse	20.5	18.5	22
Concordia	17.5	15.5	15	Goodland	20.5	18.5	22
Hutchinson	19	17	16	Elkhart	21.5	19.5	22

Kansas to Texas Group 3, including Galveston and Houston

	Present domestic		Present export		Prescribed wheat and coarse grains
	Wheat	Coarse grains	Wheat	Coarse grains	
Wichita	46	41.5	37	33.5	33
Syracuse	51.5	46.5	40.5	36.5	43
Beloit	51	46	40.5	36.5	36
Goodland	54	48.5	44	39.5	43
Salina	48	43	38	34.5	36
Dodge City	48	43	40	36	39.5
Great Bend	48	43	38	34.5	38
Hutchinson	46	41.5	37.5	34	37
Kinsley	48	43	39	35.5	38
Liberal	50	45	44	39.5	41
Tribune	51.5	46.5	39	35.5	43
Stafford	48	43	38	34.5	38
Kingman	46	41.5	37.5	34	37
Newton	46	41.5	37	33.5	36
Colby	53.5	48	44	39.5	41
Concordia	51	46	40	36	36
Wakeeney	52.5	47.5	43.5	39	39.5
Oakley	53	47.5	44	39.5	41
Lenora	53	47.5	42	38	38
Kansas City (local)	48	43			35

Kansas to Louisiana Group 3, on and east of the Rock Island, south through Ruston, Alexandria, and Eunice, including New Orleans[1]

	Present domestic		Present export		Prescribed domestic, wheat and coarse grains
	Wheat	Coarse grains	Wheat	Coarse grains	
Wichita	48	43	38	34.5	38
Syracuse	54.5	49	40.5	36.5	48
Beloit	51	46	40.5	36.5	41
Goodland	54	48.5	44	39.5	48
Salina	48	43	38	34.5	41
Dodge City	52	47	40	36	44.5
Great Bend	50	45	38	34.5	43
Hutchinson	50	45	37.5	34	42
Kinsley	50	45	39	35.5	43
Liberal	52	47	44	39.5	46
Tribune	53	47.5	39	35.5	48
Stafford	50	45	38	34.5	43
Kingman	50	45	38.5	35	42
Newton	48	43	37	33.5	41
Colby	53.5	48	44	39.5	46
Concordia	51	46	40	36	41
Wakeeney	52.5	47.5	43.5	39	44.5
Oakley	53	47.5	44	39.5	46
Lenora	53	47.5	42	38	43
Kansas City (local)	48	43			40

[1] West of above-described line, 3 cents less.

Minnesota to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Albert Lea	22.5	20.5	21	Miloma	24	21.5	25
Appleton	26	23.5	24	New Ulm	25	22.5	24.5
Breckenridge	27	24.5	26.5	Ortonville	26.5	24	25
Crookston	29	26	29	Paynesville	24	21.5	21.5
Evansville	26	23.5	24	Pipestone	25.5	23	25
Fairmont	22.5	20.5	24	Red Wing	22.5	20.5	21
Faribault	22.5	20.5	21.5	Rochester	21	19	19.5
Fergus Falls	26.5	24	25	Sauk Center	25	22.5	22.5
Glenwood	25.5	23	24	Staples	25.5	23	24
Glyndon	27.5	24.5	27	Tintah	26.5	24	25.5
Granite Falls	25.5	23	24	Willmar	24	21.5	22
Hanley Falls	25.5	23	24	Winona	18	16	18.5
Luverne	25.5	23	25	Winnebago	22.5	20.5	22
Mankato	22.5	20.5	21	Worthington	24.5	22	25
Marshall	26	23.5	25	Minneapolis	22.5	20.5	22

Minnesota to Minneapolis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Albert Lea	12	11	11	Miloma	13	11.5	14
Appleton	13.5	12	13	New Ulm	11	10	10.5
Breckenridge	14	12.5	15.5	Ortonville	13.5	12	14
Crookston	16	14.5	18	Paynesville	10.5	9.5	10.5
Evansville	13	11.5	13	Pipestone	14	12.5	15
Fairmont	12.5	11.5	13	Red Wing	7.5	6.5	7.5
Faribault	8	7	8	Rochester	12	11	11.5
Fergus Falls	13.5	12	14	Sauk Center	12	11	11.5
Glenwood	12.5	11.5	13	Staples	12.5	11.5	13
Glyndon	14.5	13	16	Tintah	13.5	12	14.5
Granite Falls	12.5	11.5	13	Willmar	11	10	11
Hanley Falls	12.5	11.5	13	Winona	12	11	11.5
Luverne	14	12.5	15.5	Winnebago	12.5	11.5	12
Mankato	10.5	9.5	10	Worthington	13.5	12	14
Marshall	13	11.5	14				

Minnesota to Duluth

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Albert Lea	18.5	16.5	15.5	Miloma	19.5	17.5	18
Appleton	15.5	14	17.5	New Ulm	17.5	15.5	16.5
Breckenridge	14.5	13	16.5	Ortonville	20	18	18.5
Crookston	16	14.5	17.5	Paynesville	15.5	14	15.5
Evansville	14	12.5	15.5	Pipestone	19	17	19.5
Fairmont	19.5	17.5	18	Red Wing	14	12.5	15
Faribault	14.5	13	15.5	Rochester	18.5	16.5	16
Fergus Falls	14	12.5	15.5	Sauk Center	14	12.5	14.5
Glenwood	14	12.5	15.5	Staples	13	11.5	13
Glyndon	15.5	14	16.5	Tintah	15.5	14	19
Granite Falls	17	15.5	16.5	Willmar	16	14.5	15.5
Hanley Falls	17	15.5	17.5	Winona	18.5	16.5	16
Luverne	20.5	18.5	20	Winnebago	19	17	16.5
Mankato	17	15.5	16	Worthington	20	18	18.5
Marshall	17.5	15.5	18				

Western and northern Missouri to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Carrollton	21	19	21	Higginsville	22	20	23
Centralia	19.5	17.5	19.5	Macon	20	18	19.5
Chillicothe	20.5	18.5	21.5	Marshall	21.5	19.5	21.5
Clark	19.5	17.5	20	Martinsburg	18	16	21
Columbia	20.5	18.5	23	Maryville	23.5	21	20.5
Conception	23.5	21	24	Milan	20.5	18.5	20.5
Darlington	23.5	21	23	Plattsburg	21.5	19.5	23
Francis	18	16	19	St. Charles	18	16	19
Gallatin	21.5	19.5	23	Trenton	20.5	18.5	21
Glasgow	21	19	21	Wellsville	18	16	21
Higbee	19.5	17.5	20.5	Kansas City (local)	23.5	21	24

Western Missouri to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and course grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Albany	14	12.5	11.5	Milan	16.5	15	13
Bethany	15.5	14	12	Neosho	14.5	13	14.5
Carrollton	11	10	9	Nevada	12	11	11.5
Carthage	14.5	13	13.5	Ozark	17.5	15.5	15.5
Chillicothe	12	11	10.5	Platte City	7.5	6.5	7.5
Clinton	12	11	10.5	Plattsburg	9	8	7.5
Galena	14.5	13	16	Sedalia	13.5	12	11
Grant City	14	12.5	12	Springfield	14.5	13	14.5
Greenfield	14.5	13	13.5	Trenton	14	12.5	11.5
Harrisonville	9.5	8.5	8	Unionville	16.5	15	13.5
Higginsville	10.5	9.5	8.5	Warrensburg	11	10	9
Marshall	12.5	11.5	10.5	Warsaw	14.5	13	13
Marysville	14	12.5	11				

Western and northern Missouri to St. Louis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Carrollton	17	15.5	16	Higginsville	18	16	16.5
Centralia	15.5	14	12	Macon	16	14.5	14
Chillicothe	16.5	15	16	Marshall	17.5	15.5	15.5
Clark	15.5	14	13	Martinsburg	13.5	12	11
Columbia	16.5	15	13	Maryville	19.5	17	19
Conception	19.5	17.5	19	Milan	16.5	15	16.5
Darlington	19.5	17.5	18	Plattsburg	17.5	15.5	20
Francis	14	12.5	12	St. Charles	7.5	6.5	7
Gallatin	17.5	15.5	16.5	Trenton	16.5	15	17.5
Glasgow	17	15.5	14.5	Wellsville	13.5	12	11
Higbee	15.5	14	16				

Missouri to Louisiana Group 3, including New Orleans

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
St. Louis (local)	36	32.5	[1] 33	Carthage	44.5	40	[1] 36
Boonville	44.5	40	[1] 40	Springfield	43	38.5	[1] 36
Sikeston	33	29.5	[1] 30	Kansas City (local)	47	42.5	[1] 40

[1] West of the Rock Island from Randolph, south through Ruston, Alexandria, and Eunice 4 cents higher except from stations referenced otherwise.
[1] Will be 3 cents less.

Missouri to Texas Group 3, including Houston and Galveston

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
St. Louis (local)	49	44	37	Carthage	46	41.5	33
Boonville	49	44	37	Springfield	46	41.5	33
Sikeston	46	41.5	34	Kansas City (local)	48	43	35

From Missouri to Cairo, Ill

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Illmo	12	11	7.5	Melby	13.5	12.5	12
Delta	12	11	9	Poplar Bluff	15	13.5	12
White Water	15.5	14	9	Naylor	18	16.5	13
Lutesville	16	14.5	9	Ironton	20	18	13
Ardeola	13.5	12.5	9	Summitt	20	18	13
Jackson	14.5	13	9	Farrensburg	13.5	12.5	13
Marquand	18	16.5	11	Doniphan	18	16.5	14
Dexter	13.5	12.5	11	Anniston	13.5	12.5	14
Sikeston	13.5	12.5	12	Blackwell	20	18	14
Bernie	13.5	12.5	12	Birds Point	15	13.5	15
Belmont	13.5	12.5	12	Riverside	20	18	15.5
Omeara	20	18	12	Koch	20	18	15.5

From southeastern Missouri to St. Louis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Illmo	16	14.5	13	Melby	16	14.5	16.5
Delta	16	14.5	14	Poplar Bluff	16	14.5	15.5
Caney Creek	16	14.5	14.5	Naylor	16	14.5	16.5
Lutesville	15.5	14	14	Ironton	12.5	11.5	12
Ardeola	16	14.5	15	Summitt	11	10	10
Jackson	16	14.5	15.5	Farrensburg	16	14.5	17
Marquand	14.5	13	13	Doniphan	16	14.5	16.5
Dexter	16	14.5	15.5	Anniston	16	14.5	18
Sikeston	16	14.5	16	Blackwell	12.5	11	9
Bernie	16	14.5	16	Birds Point	16	14.5	18
Belmont	16	14.5	16	Riverside	8	7	7.5
Omeara	15.5	14	12	Koch	7.5	7	6.5

From southeastern Missouri to Memphis, Tenn.

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Illmo	16	14.5	16.5	Melby	16	14.5	14
Delta	16	14.5	15.5	Poplar Bluff	16	14.5	15
Caney Creek	16	14.5	17	Naylor	16	14.5	14.5
Lutesville	19	17	17	Ironton	19	17	18
Ardeola	16	14.5	15.5	Summitt	19	17	18.5
Jackson	16	14.5	17	Farrensburg	16	14.5	15.5
Marquand	19	17	18	Doniphan	16	14.5	15.5
Dexter	16	14.5	15.5	Anniston	16	14.5	15.5
Sikeston	16	14.5	16	Blackwell	19	17	20
Bernie	16	14.5	14	Birds Point	16	14.5	16
Belmont	16	14.5	17	Riverside	19	17	20.5
Omeara	19	17	16.5				

Montana to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Billings	52.5	51	48	Judith Gap	55	53.5	51
Bozeman	55	53.5	52	Kalispell	61	59.5	57
Culbertson	43	41.5	41	Laurel	53.5	52	48.5
Cut Bank	57.5	56	53	Lewistown	55	53.5	51.5
Forsyth	49	47.5	45	Livingston	55	53.5	51.5
Glasgow	48	46.5	45	Missoula	61	59.5	57.5
Great Falls	55	53.5	52.5	Ringling	61	59.5	51.5
Hardin	62	60.5	49.5	Shelby	56	54.5	52
Harlowton	55	53.5	49.5	Terry	45.5	44	42.5
Havre	52.5	51	49	Yates	44	42.5	40.5
Helena	57.5	56	54.5	Ryegate	53.5	52	49

Montana to Minneapolis-Duluth

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Billings	39.5	39.5	37	Judith Gap	42	42	40
Bozeman	42	42	41	Kalispell	48	48	46
Culbertson	30	30	30	Laurel	40.5	40.5	37.5
Cut Bank	44.5	44.5	42	Lewistown	42	42	40.5
Forsyth	36	36	34	Livingston	42	42	40.5
Glasgow	35	35	34	Missoula	48	48	46.5
Great Falls	42	42	41.5	Ringling	48	48	40.5
Hardin	49	49	38.5	Shelby	43	43	41
Harlowton	42	42	38.5	Terry	32.5	32.5	31.5
Havre	39.5	39.5	38	Yates	31	31	29.5
Helena	44.5	44.5	43.5	Ryegate	42	42	38

Montana to Seattle

	Present domestic		Present export		Prescribed wheat and coarse grains
	Wheat	Coarse grains	Wheat	Coarse grains	
Billings	40.5	36.5	33.5	30	38
Bozeman	38.5	34.5	31.5	28.5	34
Culbertson	46	41.5			45
Cut Bank	38.5	34.5	32	29	34
Forsythe	45.5	41			41
Glasgow	45	40.5			42
Great Falls	39	35	32	29	34
Hardin	44.5	40			40.5
Harlowton	39	35	32	29	37
Havre	38.5	34.5	32	29	37.5
Helena	38.5	34.5	31.5	28.5	31.5
Judith Gap	39	35	32	29	37.5
Kalispell	35	31.5	32	29	30
Laurel	40.5	36.5	33.5	30	37.5
Lewistown	39	35	32	29	38.5
Livingston	39	35	32	29	34.5
Missoula	36	32.5	29	26	27
Ringling	39	35	32	29	35
Shelby	38.5	34.5	32	29	34.5
Terry	52	47			40.5
Gates	57.5	51.5			49.5
Ryegate	40.5	36.5			34

Nebraska to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Lincoln	28.5	25.5	26	Fremont	27	24.5	26
Fairmont	34.5	31.5	26.5	Schuyler	30.5	27.5	26
Harvard	36.5	35.5	28	Columbus	33	29.5	25.5
Hastings	37	33.5	28.5	Alliance	43	38.5	37
Minden	37	33.5	29.5	Central City	36.5	33.5	27
Holdredge	37	33.5	30.5	Norfolk	34	31	27
Cambridge	39	35.5	32	Albion	36.5	33.5	27
Culbertson	39	35.5	33.5	Spaulding	37	33.5	28
Salem	31.5	28.5	26.5	Palmer	37	33.5	29
Blue Hill	37	33.5	29	Greeley Center	37	33.5	26.5
Wilcox	37	33.5	30	Grand Island	37	33.5	28
Curtis	39	35.5	33	Kearney	37	33.5	29.5
Venango	39	35.5	35.5	Ravenna	37	33.5	29
Superior	37	33.5	29	North Platte	39	35	33
Tecumseh	33	29.5	26.5	Omaha (local)	23.5	21	24

Nebraska to Omaha

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Lincoln	11	10	8.5	Fremont	9.5	8.5	8.5
Fairmont	17	15.5	11.5	Schuyler	13	11.5	9
Harvard	19	17	13	Columbus	15.5	14	10.5
Hastings	19.5	17.5	13.5	Alliance	25.5	23	22
Minden	19.5	17.5	14.5	Central City	19	17	12
Holdredge	19.5	17.5	15.5	Norfolk	16.5	15	12
Cambridge	21.5	19.5	17	Albion	19	17	12
Culbertson	21.5	19.5	18.5	Spaulding	19.5	17.5	13
Salem	14	12.5	11.5	Palmer	19.5	17.5	11
Blue Hill	19.5	17.5	14	Greeley Center	19.5	17.5	14.5
Wilcox	19.5	17.5	15	Grand Island	19.5	17.5	13
Curtis	21.5	19.5	18	Kearney	19.5	17.5	14.5
Venango	21.5	19.5	20.5	Ravenna	19.5	17.5	14
Superior	19.5	17.5	14	North Platte	21.5	19.5	18
Tecumseh	15.5	14	11.5				

Nebraska to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Lincoln	17	15.5	14.5	Tecumseh	16.5	15	13
Fairmont	20	18	16.5	Fremont	17.5	15.5	14.5
Harvard	20.5	18.5	17.5	Schuyler	21	19	15
Hastings	20.5	18.5	18.5	Columbus	21.5	19.5	16.5
Minden	21.5	19.5	19	Central City	23.5	21	18
Holdredge	21.5	19.5	19.5	Norfolk	23	20.5	18
Cambridge	21.5	19.5	21	Albion	25.5	23	18
Culbertson	23	20.5	22	Spaulding	26	23.5	19
Salem	13.5	12	12	Palmer	25.5	23	20
Blue Hill	20.5	18.5	18	Greeley Center	26	23.5	20.5
Wilcox	21.5	19.5	19.5	Grand Island	23.5	21	19
Curtis	25.5	23	22	Kearney	24	21.5	20.5
Venango	26.5	24	24.5	Ravenna	24	21.5	20
Superior	19.5	17.5	16	North Platte	28	21.5	24

Nebraska to Texas Group 3, including Houston and Galveston

	Present wheat	Present coarse grains	Prescribed wheat and course grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Hastings	57.5	51.5	39.5	Grand Island	60.5	54.5	40
Superior	56.5	51	37	Kearney	61	55	41.5
Blue Hill	57.5	51.5	39	Fairmont	57	51.5	37.5
Holdredge	58.5	52.5	40.5	Lincoln	51	46	36
Wilcox	58.5	52.5	40.5				

Nebraska to Louisiana Group 3, on and east of the Rock Island, south through Ruston, Alexandria, and Eunice, including New Orleans[1]

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains[2]		Present wheat	Present coarse grains	Prescribed wheat and coarse grains[2]
Hastings	57.5	51.5	44.5	Grand Island	60.5	54.5	45
Superior	56.5	51	42	Kearney	61	55	46.5
Blue Hill	57.5	51.5	44	Fairmont	57	51.5	42.5
Holdredge	58.5	52.5	45.5	Lincoln	51	46	41
Wilcox	60.5	54.5	45.5				

[1] West of the line described, 3 cents less.

[2] Combination on Kansas City from south of the Union Pacific main line west from Omaha through Columbus and Grand Island and combination on both Omaha and Kansas City from, on, and north of that line.

North Dakota to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Williston	40	36	28.5	Tuttle	36	32.5	33
Northgate	39.5	35.5	37	Pingree	33	29.5	31.5
Rugby	35.5	32	34	Carrington	33	29.5	31.5
Antler	35.5	32	36	Jamestown	33	29.5	30.5
Devils Lake	32.5	29.5	32	Esmond	35.5	32	34
Pembina	30.5	27.5	33	Hannah	32.5	29.5	33
Dunseith	35.5	32	37	Conway	31	28	31
Walhalla	30.5	27.5	32.5	Northwood	30.5	27.5	30
Grand Forks	29.5	26.5	30	Portland	30.5	27.5	29.5
Fargo	29.5	26.5	27.5	Grafton	30.5	27.5	31
Killdeer	44	39.5	28	Sanborn	33	29.5	30
Turtle Lake	38.5	34.5	35	Marion	33.5	30	30.5
Beach	44	39.5	39	Casselton	30.5	27.5	28
Scoria	42.5	38.5	38	Milnor	32.5	29.5	28.5
Dickinson	41	37	37	Sharon	32.5	29.5	30
Hebron	39.5	35.5	36	Neche	30.5	27.5	32
Sykeston	33.5	30	32				

North Dakota to Minneapolis-Duluth

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Williston	27	24.5	27.5	Tuttle	23	20.5	22
Northgate	26.5	24	26	Pingree	20	18	20.5
Rugby	22.5	20.5	23	Carrington	20	18	20.5
Antler	22.5	20.5	25	Jamestown	20	18	19.5
Devils Lake	19.5	17.5	21	Esmond	22.5	20.5	23
Pembina	17.5	15.5	22	Hannah	19.5	17.5	22
Dunseith	22.5	20.5	26	Conway	18	16	20
Walhalla	17.5	15.5	21.5	Northwood	17.5	15.5	19
Grand Forks	16.5	15	19	Portland	17.5	15.5	18.5
Fargo	16.5	15	16.5	Grafton	17.5	15.5	20
Killdeer	31	28	27	Sanborn	20	18	19
Turtle Lake	25.5	23	24	Marion	20.5	18.5	19.5
Beach	31	28	28	Casselton	17.5	15.5	17
Scoria	29.5	26.5	27	Milnor	19.5	17.5	17.5
Dickinson	28	25	26	Sharon	19.5	17.5	19
Hebron	26.5	24	25	Neche	17.5	15.5	21
Sykeston	20.5	18.5	21				

Oklahoma to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Altus	43	38.5	38	Hooker	43	38.5	36
Alva	38	34	34	Hobart	41.5	37.5	37
Anadarko	41	37	35	Hugo	40	36	37
Antlers	38.5	34.5	35	Kingfisher	40	36	34.5
Ardmore	44.5	40	36	Lawton	43	38.5	36
Arapaho	41.5	37.5	36	Mangum	43	38.5	38
Buffalo	42	38	36	Medford	36.5	33	33
Camargo	43	38.5	37	Muskogee	37	33.5	32
Cherokee	38	34	33.5	Newkirk	36.5	33	32
Cheyenne	43.5	39	37	Norman	44	39.5	34
Chickasha	40.5	36.5	35	Oklahoma City	40	36	34
Cordell	41.5	37.5	37	Purcell	44.5	40	35
Durant	40	36	36.5	Perry	38.5	34.5	34
El Reno	40	36	34	Watonga	40	36	35
Enid	38.5	34.5	33	Woodward	43	38.5	35
Fairview	40	36	34.5	Sayre	43.5	39	38
Forgan	45	40.5	38	Shattuck	45	40.5	36.5
Guthrie	40	36	34.5	Tulsa	36	32.5	30.5
Guymon	43.5	39	37.5	Vinita	34.5	31	29

Oklahoma to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Altus	35.5	32	23	Hobart	34	30.5	22
Alva	22.5	20.5	19	Hooker	27	24.5	21
Anadarko	32.5	29.5	20	Hugo	33	29.5	22
Antlers	32	29.5	21	Kingfisher	28	25	19.5
Ardmore	36.5	33	21	Lawton	33	29.5	21
Arapaho	33	29.5	21	Mangum	35.5	32	23
Buffalo	26	23.5	21	Medford	20	18	18
Camargo	36	32.5	22	Muskogee	25.5	23	17
Cherokee	22.5	20.5	18.5	Newkirk	20	18	17
Cheyenne	36	32.5	22	Norman	31	28	19
Chickasha	31	28	20	Oklahoma City	29.5	26.5	19
Cordell	34	30.5	22	Purcell	31	28	20
Durant	36.5	33	21.5	Perry	23.5	21	19
El Reno	29.5	26.5	19	Watonga	29	26	20
Enid	23.5	21	18	Woodward	28	25	20
Fairview	26.5	24	19.5	Sayre	35.5	32	23
Forgan	29	26	23	Shattuck	29	26	21.5
Guthrie	28	25	19.5	Tulsa	22.5	20.5	16.5
Guymon	29	26	22.5	Vinita	19.5	17.5	14.5

Oklahoma to St. Louis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Altus	38	34	33	Hobart	37.5	33.5	31
Alva	34	30.5	28	Hooker	40	36	30
Anadarko	37	33.5	39	Hugo	34.5	31	26.5
Antlers	33	29.5	25.5	Kingfisher	35	31.5	28.5
Ardmore	38	34	30	Lawton	37	33.5	30
Arapaho	36	32.5	30	Mangum	38	34	32
Buffalo	37	33.5	30	Medford	32.5	29.5	27
Camargo	38	34	31	Muskogee	32	29	23.5
Cherokee	34	30.5	27.5	Newkirk	32.5	29.5	26
Cheyenne	38	34	31	Norman	37	33.5	28
Chickasha	36.5	33	39	Oklahoma City	36	32.5	28
Cordell	37.5	33.5	31	Purcell	37	33.5	29
Durant	36	32.5	27.5	Perry	34.5	31	28
El Reno	36	32.5	28	Watonga	36	32.5	29
Enid	34.5	31	27	Woodward	37	33.5	29
Fairview	36	32.5	28.5	Sayre	38	31	32
Forgan	39	35	32	Shattuck	38	34	30.5
Guthrie	35	31.5	28.5	Tulsa	30	27	23.5
Guymon	42.5	38.5	31.5	Vinita	29	26	20.5

Oklahoma to Texas Group 3, including Galveston and Houston

	Present wheat[1]	Present coarse grains[1]	Prescribed wheat and coarse grains		Present wheat[1]	Present coarse grains[1]	Prescribed wheat and coarse grains
Altus	32	29	26.5	Hobart	34	30.5	27
Alva	36	32.5	31	Hooker	38	34	37
Anadarko	33	29.5	26.5	Hugo	30	27	23.5
Antlers	31	28	24	Kingfisher	34	30.5	27.5
Ardmore	30	27	23	Lawton	31	28	25
Arapaho	35	31.5	28	Mangum	33	29.5	27
Buffalo	38	34	33	Medford	36	32.5	29.5
Camargo	36	32.5	29.5	Muskogee	34	30.5	27.5
Cherokee	36	32.5	30.5	Newkirk	36	32.5	30.5
Cheyenne	36	32.5	31	Norman	32	29	26
Chickasha	32	29	26	Oklahoma City	33	29.5	26.5
Cordell	34	30.5	27.5	Purcell	32	29	26
Durant	29	26	22.5	Perry	35	31.5	28.5
El Reno	33	29.5	26.5	Watonga	35	31.5	28
Enid	35	31.5	29	Woodward	36	32.5	31
Fairview	36	32.5	31	Sayre	36	32.5	30.5
Forgan	38	34	34	Shattuck	38	34	34
Guthrie	34	30.5	27.5	Tulsa	35	31.5	29
Guymon	37	33.5	36	Vinita	35	31.5	29

[1] Export rates to Galveston; domestic rates are from 1 to 2 cents higher.

Oklahoma to Memphis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Alva	31.5	28.5	31.5	Hugo	31.5	28.5	23
Anadarko	31.5	28.5	29	Kingfisher	31.5	28.5	28
Antlers	36.5	33	33.5	Lawton	31.5	28.5	29.5
Ardmore	34.5	31	26.5	Mangum	31.5	28.5	32
Arapaho	31.5	28.5	29.5	Medford	31.5	28.5	31
Buffalo	47	42.5	33	Muskogee	31.5	28.5	23
Camargo	31.5	28.5	32.5	Newkirk	38	34	29.5
Cherokee	34.5	31	31	Norman	31.5	28.5	27.5
Cheyenne	37	33.5	31.5	Oklahoma City	31.5	28.5	26.5
Chickasha	31.5	28.5	28	Purcell	35.5	32	27.5
Cordell	31.5	28.5	30.5	Perry	31.5	28.5	29
Durant	34.5	31	25	Watonga	31.5	28.5	29
El Reno	31.5	28.5	27.5	Woodward	43.5	39	32.5
Enid	31.5	28.5	29	Sayre	31.5	28	31.5
Fairview	31.5	28.5	31	Shattuck	44	39.5	34
Guthrie	31.5	28.5	27.5	Tulsa	31.5	28	25.5
Hobart	31.5	28.5	31	Vinita	29.5	26.5	24

Oklahoma to Louisiana Group 3, on and east of the Rock Island south from Randolph through Ruston, Alexandria, and Eunice [1]

	Present wheat [2]	Present coarse grains [2]	Prescribed wheat and coarse grains		Present wheat [2]	Present coarse grains [2]	Prescribed wheat and coarse grains
Alva	45	40.5	36.5	Hugo	32	29	24
Anadarko	40	36	31.5	Kingfisher	41	37	33
Ardmore	36	33	27.5	Lawton	38	34.5	30.5
Arapaho	43	38.5	34.5	Mangum	41	37	32.5
Buffalo	48	43	39	Medford	44	39.5	35
Camargo	44	39.5	36	Muskogee	37	33.5	29
Cherokee	44	39.5	36	Newkirk	43	38.5	34.5
Cheyenne	45	40.5	36.5	Norman	38	34.5	30.5
Chickasha	40	36	31.5	Oklahoma City	39	35.5	31
Cordell	43	38.5	34	Purcell	38	34.5	29.5
Durant	34	31	26	Perry	41	37	33
El Reno	40	36	32.5	Watonga	42	38	34
Enid	43	38.5	34	Woodward	45	40.5	37
Fairview	45	40.5	37	Sayre	43	38.5	36
Forgan	48	43	39	Shattuck	46	41.5	39
Guthrie	40	36	32	Tulsa	39	35.5	31
Hobart	42	38	33	Vinita	39	35.5	31

[1] West of that line, 3 cents less; export rates to New Orleans are from 1 to 2 cents higher than to Galveston from west of the Santa Fe line south from Arkansas City through Oklahoma City to Texas State line.

[2] Averages to Eunice, Lafayette, and New Orleans.

Washington and Oregon, south of Snake River, to Seattle

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Ayer, Wash.	21	20	Ash, Wash.	20.5	19.5
Starbuck, Wash.	21	20	Page, Wash.	20.5	19.5
Pleasant View, Wash.	21	20	Simmons, Wash.	20.5	19.5
Ellwood, Wash.	21	20	Wallula, Wash.	20.5	19.5
Bolles, Wash.	21	20	Touchet, Wash.	20.5	19.5
Alto, Wash.	21	20	Whitman, Wash.	20.5	19.5
Dayton, Wash.	21	20	Walla Walla, Wash.	20.5	19.5
Pomeroy, Wash.	25.5	20	Hadley, Wash.	20.5	19.5
Turner, Wash.	21	20	Athena, Oreg.	20.5	19.5
Waitsburg, Wash.	21	20	Blue Mountain, Oreg.	20.5	19.5
Eureka, Wash.	20.5	19.5	Spofford, Oreg.	20.5	19.5
Blakeley, Wash.	20.5	19.5	Pendleton, Oreg.	20.5	19.5
Attalia, Wash.	20.5	19.5	Wayland, Oreg.	20.5	19.

Washington and Oregon, south of Snake River, to Portland

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Ayer, Wash.	19	18	Ash, Wash.	18.5	17.5
Starbuck, Wash.	19	18	Page, Wash.	18.5	17.5
Pleasant View, Wash.	19	18	Simmons, Wash.	18.5	17.5
Ellwood, Wash.	19	18	Wallula, Wash.	18.5	17.5
Bolles, Wash.	19	18	Touchet, Wash.	18.5	17.5
Alto, Wash.	19	18	Whitman, Wash.	18.5	17.5
Dayton, Wash.	19	18	Walla Walla, Wash.	18.5	17.5
Pomeroy, Wash.	23	18	Hadley, Wash.	18.5	17.5
Turner, Wash.	19	18	Athena, Oreg.	18.5	17.5
Waitsburg, Wash.	19	18	Blue Mountain, Oreg.	18.5	17.5
Rulo, Wash.	18.5	17.5	Spofford, Oreg.	18.5	17.5
Eureka, Wash.	18.5	17.5	Pendleton, Oreg.	18.5	17.5
Blakeley, Wash.	18.5	17.5	Wayland, Oreg.	18.5	17.5
Attalia, Wash.	18.5	17.5			

Oregon, Washington Railroad & Navigation Company main and branch line points in Oregon, west and southeast of Pendleton and from Oregon Short Line Railroad points on the Burns and Homestead branches, to Portland

	Interstate, present wheat and coarse grains	Intrastate, present wheat and coarse grains	Interstate and intrastate, prescribed wheat and coarse grains		Interstate, present wheat and coarse grains	Intrastate, present wheat and coarse grains	Interstate and intrastate, prescribed wheat and coarse grains
Arlington	16.5	16.5	13	La Grande	25	25	20.5
Baker	26.5	26.5	22.5	Lexington	22	20	15
Bend	31	23.5	17.5	Maupin	20.5	18.5	14
Huntington	30	.....	23.5	Mission	19.5	19.5	17.5
Cecil	21	19	14.5	Pilot Rock	25	22	17.5
Condon	22.5	20	16	Redmond	28.5	22.5	17.5
Crane	38	.....	29	Reith	18.5	18.5	17.5
Elgin	27	26.5	21	Riverside	38	38	29
Enterprise	31.5	29	23	Shaniko	22.5	19.5	14.5
Gateway	24	20.5	15.5	Speece	22	19.5	14.5
Grass Valley	21.5	18	13.5	The Dalles	10.5	10.5	11
Harper	36	.....	26.5	Thorn Hollow	20.5	20.5	17.5
Heppner	22.5	20.5	15.5	Umatilla	17.5	17.5	15
Hinkle	21.5	20	16	Wallowa	31.5	28.5	22.5
Homestead	32	32	26	Wasco	17	16.5	12.5
Joseph	31.5	29.5	25				

South Dakota to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Yankton	29	26	24	Huron	34	31.5	29.5
Scotland	30	27	25.5	Redfield	34	31	31
Tyndall	31	28	25.5	Watertown	31	28	27
Sioux Falls	27.5	24.5	26	Faulkton	38	34.5	31
Parker	28	25	26	Aberdeen	34	31	29
Wagner	33	29.5	27	Roscoe	38	34.5	31
Salem	30	27	27	Pierre	41	37	24
Madison	29.5	26.5	28	Presho	40.5	36.5	34
Vilas	30	27	28	Stamford	42.5	38.5	36.5
Wentworth	29.5	26.5	28	Imlay	43.5	39	38.5
Mitchell	30.5	27.5	27	Rapid City	45.5	41	40
Platte	34	31	28	Faith	42.5	38.5	38.5
Plankinton	32.5	29.5	28.5	Isabel	39.5	35.5	36.5
Stickney	32.5	29.5	28	Van Metre	44.5	40	36.5
Tripp	30.5	27.5	26.5	Powell	46	41.5	38
Woonsocket	31.5	28.5	29	Underwood	49	44	40.5
Arlington	32.5	29.5	29	Bonesteel	36.5	32.5	29
Wolsey	34	31	30	Gregory	39	35	30.5
Chamberlain	34.5	31.5	30.5	Winner	40.5	36	31

South Dakota to Minneapolis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Yankton	21	19	18.5	Wolsey	21	19	19
Scotland	23.5	21	20.5	Chamberlain	28	25	24
Tyndall	24.5	22	20.5	Huron	21	19	18
Sioux Falls	18.5	16.5	16.5	Redfield	21	19	19
Parker	20	18	18.5	Watertown	18	16	16
Wagner	26.5	24	21	Aberdeen	21	19	18
Salem	24	21.5	17.5	Roscoe	25	22.5	20
Madison	19	17	18	Pierre	28	25	23
Vilas	20	18	18.5	Presho	31.5	28.5	27.5
Wentworth	19	17	16.5	Stamford	33.5	30.5	29
Mitchell	21	19	19	Imlay	36	33	31.5
Faulkton	25	22.5	20	Rapid City	36	33	29.5
Platte	27.5	24.5	22	Faith	29.5	26.5	27.5
Plankinton	24	21.5	23	Isabel	26.5	24	25.5
Stickney	26	23.5	22	Van Metre	31.5	28.5	26
Tripp	24	21.5	20.5	Powell	33	29.5	27
Woonsocket	21	19	19	Underwood	35	32	29.5
Arlington	19.5	17.5	16.5				

South Dakota to Sioux City

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Yankton	12	11	11	Huron	18	16	14.5
Scotland	13.5	12	11	Redfield	20	18	16
Tyndall	13.5	12	11	Watertown	20	18	16
Sioux Falls	14	12.5	11	Faulkton	23	20.5	18.5
Parker	14.5	13	11	Aberdeen	22.5	20.5	17.5
Wagner	16	14.5	12	Pierre	25	22.5	19
Salem	16	14.5	12	Roscoe	23	20.5	18.5
Madison	16.5	15	12	Presho	24.5	22	18
Vilas	17	15.5	13	Stamford	28	25	21
Wentworth	16.5	15	13	Imlay	33	30.5	23
Mitchell	17	15.5	12	Rapid City	34.5	31.5	25
Platte	17	15.5	13	Faith	29.5	26.5	27
Plankinton	17.5	15.5	13.5	Isabel	26.5	24	25
Stickney	17.5	15.5	13	Van Metre	28.5	25.5	21.5
Tripp	15.5	14	12	Powell	31	28	23
Woonsocket	18	16	14	Underwood	34.5	31.5	25
Arlington	17.5	15.5	14	Bonesteel	19	17	14
Wolsey	18	16	15	Gregory	21.5	19.5	15.5
Chamberlain	19.5	17.5	15.5	Winner	23	20.5	16

Texas to Kansas City

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Amarillo	35	31.5	27	Lamosa	39	35	33
Benonine	33	30.5	25.5	Lubbock	38	34	31
Canyon	36	32.5	28	Memphis	36	32.5	29
Crosbyton	38	34	32	Panhandle	35	31.5	26.5
Dalhart	35	31.5	27	Plainview	37	33.5	29.5
Farwell	37	33.5	30	Stratford	33	30.5	24
Floydada	37	33.5	30	Texhoma	32	29	24
Fort Worth	31	28	29	Vernon	38	34	26.5
Higgins	30	27	23.5	Wichita Falls	37	33.5	26

Texas to Texas Group 3, including Galveston and Houston

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Amarillo	33	29.5	30.5	Lamesa	36	32.5	29
Benonine	35	29.5	30.5	Lubbock	33	30.5	28
Canyon	33	29.5	31	Memphis	33	30.5	27.5
Crosbyton	33	29.5	29	Panhandle	33	30.5	32.5
Dalhart	34	30.5	33	Plainview	33	30.5	29.5
Farwell	34	30.5	31	Stratford	35	31.5	34
Floydada	33	29.5	31	Texhoma	35	31.5	36.5
Fort Worth	24	21.5	20	Vernon	33	30.5	25
Higgins	33	30.5	34	Wichita Falls	33	30.5	23

From Texas to Memphis

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Abilene	37.5	34	35	Fort Worth	36.5	33	28.5
Amarillo	37.5	34	40	Higgins	45	40.5	34
Ballinger	37.5	34	34.5	Lamesa	50	45	40
Benonine	37.5	34	32	Lubbock	46.5	42	40
Big Springs	37.5	34	38	Memphis	38	34.5	37.5
Canyon	37.5	34	40	Panhandle	43	38.5	40
Corsicana	36.5	33	27.5	Plainview	46.5	42	40
Crosbyton	46.5	42	40	Stratford	40	36	40
Dalhart	40	36	40	Texhoma	40	36	40
Farwell	46.5	42	40	Vernon	38	34.5	33
Floydada	46.5	42	40	Wichita Falls	38	34.5	31.5

Texas to Vicksburg, Miss.

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Abilene	37.5	34	30	Fort Worth	36.5	33	23.5
Amarillo	38	34.5	35	Higgins	45	40.5	35
Ballinger	37.5	34	29.5	Lamesa	50	45	35
Benonine	49.5	44.5	32	Lubbock	46.5	42	35
Big Springs	37.5	34	33	Memphis	38	34.5	32.5
Canyon	49.5	44.5	35	Panhandle	43	38.5	35
Corsicana	36.5	33	22.5	Plainview	49.5	44.5	35
Crosbyton	46.5	42	35	Stratford	49.5	44.5	37
Dalhart	41.5	37.5	36	Texhoma	49.5	44.5	38
Farwell	46.5	42	36	Vernon	38	34.5	29
Floydada	46.5	42	35	Wichita Falls	38	34.5	27.5

Texas to Louisiana Group 3, including New Orleans

	Present wheat[1]	Present coarse grains[1]	Prescribed wheat and coarse grains		Present wheat[1]	Present coarse grains[1]	Prescribed wheat and coarse grains
Abilene	37.5	34	35	Fort Worth	36.5	33	28.5
Amarillo	38	34.5	40	Higgins	52.5	47.5	40
Ballinger	37.5	34	34.5	Lamesa	50	45	40
Benonine	42	38	37	Lubbock	46.5	42	40
Big Springs	37.5	34	38	Memphis	38	34.5	37.5
Canyon	38	34.5	40	Panhandle	43	38.5	40
Corsicana	36.5	33	27.5	Plainview	47	42.5	40
Crosbyton	46.5	42	40	Stratford	52.5	47.5	42
Dalhart	41.5	37.5	40	Texhoma	52.5	47.5	43
Farwell	46.5	42	40	Vernon	37.5	34	34
Floydada	46.5	42	40	Wichita Falls	37.5	34	32.5

[1] Present rates to New Orleans.

Washington (Big Bend district) to Seattle

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Lyons	24	20	Ephrata	21.5	16
Espanola	24	20	Riparia	21.5	19.5
Bluestem	24	19.5	La Crosse	21.5	19.5
Downs	22	18.5	Farrington	21.5	19
Odessa	21.5	18	Cunningham	21.5	17.5
Wilson Creek	21.5	17.5	Winona	21.5	21
Adrian	21.5	16.5	Washtucna	21.5	18
Cheney	22	19.5	Pasco	17.5	17.5
Croskey	22	18.5	Connell	21.5	18
Emden	21.5	17.5	Bruce	21.5	19
Marengo	21.5	17.5	West Warden	21.5	17.5
Malden	24	19.5	Nagel	21.5	17
Lavista	22.5	20	Lamont	22	21
Revere	22.5	18	Amber	22	20.5
Ralston	21.5	18	Reardon	24	20
Lind	21.5	15.5	Davenport	24	19.5
Neppel	21.5	16.5	Creston	24	19
Ruff	21.5	16.5	Wilbur	24	18.5
Schoonover	21.5	17.5	Hanson	23	17.5
Marcellus	21.5	17.5	Coulee	23	17.5
Novarra	21.5	15.5	Omans	24	20

Washington (Big Bend district) to Portland

	Present wheat and coarse grains	Prescribed wheat and coarse grains		Present wheat and coarse grains	Prescribed wheat and coarse grains
Lyons	27.5	22.5	Ephrata	24.5	20.5
Espanola	27.5	23	Riparia	21.5	19.5
Bluestem	27.5	23	La Crosse	21.5	19.5
Downs	25	22	Farrington	21.5	18
Odessa	24.5	22	Cunningham	21.5	18.5
Wilson Creek	24.5	21	Winona	21.5	20
Adrian	22.5	20	Washtucna	21.5	18
Cheney	22	20	Pasco	17.5	17
Croskey	22	19	Connell	21.5	18
Emden	21.5	18.5	Bruce	21.5	19
Marengo	21.5	18.5	West Warden	21.5	19.5
Malden	28	21	Nagel	21.5	20
Lavista	28	26.5	Lamont	22	20.5
Revere	28	20	Amber	22	21
Ralston	27	19	Reardon	24	22.5
Lind	21.5	18	Davenport	24	23.5
Neppel	35.5	22.5	Creston	24	22.5
Ruff	35.5	22	Wilbur	24	22
Schoonover	35.5	23	Hanson	23	21.5
Marcellus	35.5	23.5	Coulee	23	21
Novarra	35	21.5	Omans	24	23.5

Wisconsin to Milwaukee

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Antigo	14.5	13	14	Marshfield	14.5	13	14.5
Appleton	11	10	11	Mercer	18	16	18
Cameron	18	16	18	Merrillan	14.5	13	15
Commonwealth	22.5	20.5	16.5	Rhinelander	17	15.5	16
Eau Claire	16.5	15	16.5	Sparta	14.5	13	14
Elroy	14	12.5	13.5	Three Lakes	17.5	16	16
Fond du Lac	11	10	9	Trego	18	16	19.5
Harrison	17	15.5	16	Turtle Lake	18	16	20
Janesville	12.5	11	10	Watertown	9.5	8.5	8.5
Kenosha	5	5	7.5	Waukesha	6.5	6.5	6
La Crosse	14.5	13	15.5	Wausau	14.5	13	14.5
Madison	12	12	10.5	Wisconsin Rapids	14.5	13	13.5
Manitowish	18	16	18				

Wisconsin to Chicago

	Present wheat	Present coarse grains	Prescribed wheat and coarse grains		Present wheat	Present coarse grains	Prescribed wheat and coarse grains
Antigo	18	16	17.5	Marshfield	18	16	17.5
Appleton	15.5	14	14	Mercer	23	20.5	20.5
Cameron	18	16	20.5	Merrillan	18	16	18
Commonwealth	26	23.5	19.5	Rhinelander	21	19	19
Eau Claire	18	16	19	Sparta	18	16	16.5
Elroy	18	16	15.5	Three Lakes	22.5	20.5	19
Fond du Lac	15.5	14	13	Trego	18	16	21.5
Harrison	21	19	19	Turtle Lake	18	16	22
Janesville	12.5	12.5	11	Watertown	13	12.5	12
Kenosha	5	5	8.5	Waukesha	10	10	11
La Crosse	18	16	17.5	Wausau	18	16	17.5
Madison	16.5	15	12	Wisconsin Rapids	18	16	16.5
Manitowish	23	20.5	20.5				

Interior scales [1]

Miles	W. t. l.[2]	S.W. and P. Cst.[3]	Inter-mtn.[4]	Miles	W. t. l.[2]	S.W. and P. Cst.[3]	Inter-mtn.[4]
10	6	6.5	7	760	36	39.5	43.5
20	6.5	7.5	8.5	770	36	39.5	43.5
30	7.5	8.5	9.5	780	36.5	40	44
40	8	9	10	790	36.5	40	44
50	9	9.5	10.5	800	37	40.5	44.5
60	9	10.5	11.5	810	37.5	41	45
70	10	11	12	820	37.5	41	45
80	11	12	13	830	38	41.5	45.5
90	12	12.5	14	840	38	41.5	45.5
100	12	13.5	15	850	38.5	42.5	47
110	12.5	14	15.5	860	39	43	47.5
120	13	14.5	16	870	39	43	47.5
130	13	14.5	16	880	39.5	43.5	48
140	14	15	16.5	890	39.5	43.5	48
150	14.5	15.5	17	900	40	44	48.5
160	15	16.5	18	910	40.5	44.5	49
170	15.5	17	18.5	920	40.5	44.5	49
180	15.5	17	18.5	930	41.5	45.5	50
190	16	17.5	19.5	940	41.5	45.5	50
200	16.5	18	20	950	42	46	50.5
210	17	19	21	960	42.5	46.5	51
220	17	19	21	970	42.5	46.5	51
230	17.5	19.5	21.5	980	43	47	51.5
240	18	20	22	990	43	47	51.5
250	18	20	22	1,000	43.5	48	53
260	18.5	20.5	22.5	1,020	44	48.5	53.5
270	19.5	21	23	1,040	44.5	49	54
280	20	22	24	1,060	45	49.5	54.5
290	20	22	24	1,080	45.5	50	55
300	20.5	22.5	25	1,100	46	51	56
310	21	23	25.5	1,120	47	51.5	56.5
320	21	23	25.5	1,140	47.5	52	57
330	21.5	23.5	26	1,160	48	52.5	58
340	21.5	23.5	26	1,180	48.5	53	58.5
350	22	24	26.5	1,200	49	54	59.5
360	22.5	25	27.5	1,220	49.5	54.5	60
370	22.5	25	27.5	1,240	50	55	60.5
380	23	25.5	28	1,260	50.5	55.5	61
390	23	25.5	28	1,280	51	56.5	62
400	23.5	26	28.5	1,300	51.5	57	62.5
410	24	26.5	29	1,320	52.5	57.5	63.5
420	24	26.5	29	1,340	53	58	64
430	25	27	29.5	1,360	53.5	58.5	64.5
440	25	27	29.5	1,380	54	59	65
450	25.5	28	31	1,400	54.5	60	66
460	26	28.5	31.5	1,420	55	60.5	66.5
470	26	28.5	31.5	1,440	55.5	61	67
480	26.5	29	32	1,460	56	61.5	67.5
490	26.5	29	32	1,480	56.5	62.5	69
500	27	29.5	32.5	1,500	57	63	69.5
510	27.5	30.5	33.5	1,520	58	63.5	70
520	27.5	30.5	33.5	1,540	58.5	64	70.5
530	28	31	34	1,560	59	64.5	71
540	28	31	34	1,580	59.5	65.5	72
550	28.5	31.5	34.5	1,600	60	66	72.5
560	29	32	35	1,620	60.5	66.5	73
570	29	32	35	1,640	61	67	73.5
580	29.5	32.5	36	1,660	61.5	68	74
590	29.5	32.5	36	1,680	62	68.5	74.5
600	30.5	33.5	37	1,700	62.5	69	75
610	31	34	37.5	1,720	63.5	69.5	76.5
620	31	34	37.5	1,740	64	70	77
630	31.5	34.5	38	1,760	64.5	71	77.5
640	31.5	34.5	38	1,780	65	71.5	78.5
650	32	35	38.5	1,800	65.5	72	79
660	32.5	35.5	39	1,820	66	72.5	80
670	32.5	35.5	39	1,840	66.5	73	80.5
680	33	36.5	40	1,860	67	74	81.5
690	33	36.5	40	1,880	67.5	74.5	82
700	34	37	40.5	1,900	68	75	82.5
710	34	37.5	41.5	1,920	69	75.5	83
720	34	37.5	41.5	1,940	69.5	76	83.5
730	34.5	38	42	1,960	70	77	84.5
740	34.5	38	42	1,980	70.5	77.5	85.5
750	35	38.5	42.5	2,000	71	78	86

[1] To be applied for miscellaneous interior movements; that is, for movements other than to primary markets, ports of export, and other points to which rates are not prescribed herein, either directly or by reasonable relation. Distances are to be computed over routes via which carload traffic can be interchanged without transfer of lading, and between points in differently rated groups the highest scale will apply.

[2] Western trunk-line territory.

[3] Southwestern and Pacific coast territories.

[4] Intermountain territory.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of July, A. D. 1930

No. 17000

Rate Structure Investigation

Grain and Grain Products Within the Western District and for Export

This proceeding being at issue upon an order of general investigation by the commission, and upon complaints and answers on file, and upon investigation and suspension proceedings, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That all common carriers by railroad operating as such within continental United States, respondents in No. 17000, Part 7, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before October 1, 1930, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of grain and grain products, on domestic shipments within the western district (herein defined as the territory on and west of the Mississippi River, west of Lakes Superior and Michigan, and west of and including Illinois), and on export shipments from the western district, as herein described, and from Lake Erie ports, to Atlantic, Pacific, and Gulf ports, rates which exceed those prescribed in Appendix D to said report; and to cease and desist, on or before the date mentioned, and thereafter to abstain, from practices, including transit, not in accordance with the findings in said report.

It is further ordered, That said defendants, according as they may participate in the transportation, be, and they are hereby, notified and required to establish, on or before October 1, 1930, upon notice to this commission and to the general public by not less than 20 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of grain and grain products within the territory

described in the next preceding paragraph hereof rates which shall not exceed those prescribed in Appendix D of the said report, and practices which are in harmony with the findings in said report.

It is further ordered, That this order shall continue in force until the further order of the commission.

And it is further ordered, That the complaints listed in Appendix A be dismissed, and that the investigation and suspension proceedings listed therein be discontinued.

By the commission.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

[fol. 238] EXHIBIT 2 TO COMPLAINT

Served April 16, 1931

INTERSTATE COMMERCE COMMISSION

No. 17000[1]

Rate Structure Investigation, Part VII

Grain and Grain Products Within the Western District and For Export

Decided April 13, 1931

1. Upon a further consideration of the record, and for the purpose of better effectuating the intent of the original report and order, 164 I. C. C. 619, findings in original report clarified in some instances and corrected and modified in others.

2. Petitions for reopening or reconsideration of the record not heretofore disposed of denied.

3. Carriers by water inadvertently omitted from the requirements of the original order, will be expected to comply with the terms of the order.

4. Appendix B is merely a typical list of commodities found in the grain-products list in some of the present tariffs, and is not to be viewed as a list of commodities on which Appendix D rates are prescribed.

5. Maintenance of present arbitraries on the Wichita Northwestern, the Missouri & North Arkansas, and narrow-gage lines in Colorado and other States permitted.

6. Distance rates, where conflicting therewith, are to be subordinated to prescribed group rates and rate-break combinations.

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[1] This proceeding also embraces 58 formal complaints and suspension proceedings (also subnumbers of some of the complaints), as shown in the statement of issues in Appendix A of the original report.

7. Published through rates in conflict with prescribed rate-break combinations canceled.

8. Findings as to the application of the rate-break combinations interpreted in respect of the exclusive application of proportional rates from the rate-break markets; exceptions to meet carrier competition; and at markets such as St. Paul and Minneapolis, where both the inbound flat rates and the outbound proportionals are the same, and there is no proportional rate between the two markets.

9. Situation at St. Paul and Duluth in respect of the application of the rate-break combination differentiated from that at Minneapolis and Duluth between which markets there is a proportional rate.

10. Minimum inbound flat rate of 10 cents permitted to the Twin Cities, Duluth, Missouri River markets, and St. Louis (from west of St. Louis), in order to avoid departure from the fourth section resulting from the flat rates from the markets exceeding the combinations on those markets.

11. Flat rates from St. Louis to New Orleans and Louisiana reduced.

12. Basis for flat rates from Pine Bluff and Little Rock, Ark., to New Orleans, Louisiana, and Texas prescribed in reasonable relation to the flat rates from St. Louis.

13. Minimum rate of 10 cents under the prescribed interior scales permitted.

[fol. 239] 14. Proportional rates increased from Minneapolis to Chicago and Duluth.

15. Territory from which through rates to Duluth will be combinations on Minneapolis redefined.

16. Proportional rates prescribed from Minneapolis to Sioux City, Omaha, and Kansas City. Proportional rates from Duluth to the same markets prescribed on the basis of the combinations on Minneapolis.

17. Proportional rates prescribed from Minneapolis to Peoria and St. Louis, and from Duluth to Minneapolis, Chicago, Peoria (on the Minneapolis combination), and St. Louis (on the Minneapolis combination).

18. Proportional rates canceled from Peoria to St. Louis; from Des Moines to all destinations; between Kansas City and St. Joseph; from Memphis to Little Rock; and from Memphis and Cairo to Texas groups.

19. Maintenance of present equalization of inbound and outbound rates through St. Louis, Cairo, and Memphis to Louisiana west of the Mississippi River required.

20. The eastern lines should continue the equalization of the St. Louis and Chicago gateways on shipments from Kansas City to trunk-line territory, on domestic shipments, pending an appropriate proceeding in respect of the eastern domestic rates.

21. Further findings made in respect of the Illinois "specifies" to Chicago.

22. Basis prescribed for rates from on and south of the Union Pacific in Kansas to Omaha.

23. Further findings made in respect of Investigation and Suspension Docket No. 3278.

24. Bases set and revisions made in respect of certain of the southwestern rates.

25. Modification made of findings respecting rates from Sheridan, Wyo., to destinations routing through Denver and Omaha; from Montana points in the Judith Basin, Gallatin Valley, and Great Northern "triangle" territory to Minneapolis and the north Pacific coast; and from central and western Montana to California. The latter rates required to apply through north Pacific coast terminals.

26. Prescribed rates from Idaho north and east of Pocatello to San Francisco required to apply through Ogden, Utah, as well as over the Rogerson-Wells cut-off route.

27. Rates from the Big Bend district of Washington to Portland and Seattle grouped to meet the necessities of cross-country competition.

28. Arbitrary of 0.5 cent to Longview, Wash., over Portland made to apply on grain from southern Idaho as well as on grain from south of the Snake River.

29. The criticism of transit specifically covered the number of stops and out-of-line and back hauls, and did not war-

rant, or justify, a revision of general policing rules not the subject of this criticism. Any general revision of the latter rules should be published in such form as to permit of suspension and the application of the present rules to the prescribed rates if protests so warrant.

30. The limitation of the number of transit stops without separate charge to a maximum of two does not require the granting of transit in connection with each through shipment from origin to final destination. The granting of transit will continue to be a matter for the consideration of the carrier in specific instances upon request.

31. Finding that mixed feed containing other than the direct products of grain must pay a flat rate from the point [fol. 240] of manufacture rescinded, and reasonable transit in the manufacture of mixed feed under the prescribed rates permitted, pending a nation-wide investigation of the rates on mixed feed.

32. Findings prohibiting the storage in transit of manufactured grain products reversed, and storage in transit permitted at a separate charge of 2 cents per 100 pounds for each stop.

33. Increased rates on phosphated and self-rising flour to a basis higher than on plain flour not justified upon this record.

34. Modifications in the original report and order made in conformity with the findings herein, and typographical and other obvious errors, such as fourth-section departures, corrected.

Supplemental Report of the Commission on Further Consideration

By the Commission:

In the original report, 164 I. C. C. 619, in respect of rates and practices affecting the transportation of grain and grain products throughout the western district and for export, we prescribed specific flat and proportional rates and required the construction of rates through markets on reasonably direct routes, from which proportional rates apply, by combination of flat rates to the markets and proportional rates beyond, and prohibited the application, over the routes

of the market combinations, of through rates less than the market combinations, thereby prohibiting also the application of transit balances less than the proportional rates. We prescribed rates only between key points (directing the carriers to establish rates between other points in reasonable relation to the key-point rates), prescribed so-called interior scales for application as maxima where no other rates were prescribed either specifically or by reasonable relation, made definite findings on specific adjustments of rates (some in response to complaints consolidated with the general investigation), and made general findings concerning transit practices, and specific findings concerning some phases of transit.

Petitions for Rehearing Denied

Numerous petitions for rehearing, reargument, and reconsideration were filed, by carriers mainly concerning the level of the prescribed rates, and by shippers mainly concerning the relations of rates and the findings in respect to transit, especially transit in the manufacture of mixed feed. Many of these petitioners have already been denied by separate orders. All other petitions not heretofore specifically disposed of are hereby denied.

By order of March 3, 1931, the effective date of the order, previously postponed from January 1, 1931, to April 1, 1931, was further postponed to June 1, 1931, because of the in- [fol. 241] ability of the carriers physically to comply with its terms prior to that date. This extension affords an opportunity to correct typographical and other obvious errors (such as fourth-section departures) in the prescribed rates; to clarify certain of the findings which, owing to the extensive scope of the proceeding, are necessarily general in character and susceptible to different interpretations among shippers and carriers; to make modifications of certain of the findings that seem to be warranted upon further consideration of the record; and to discuss practical problems confronting the carriers in checking in the prescribed adjustment.

Carriers by Water

The order was inadvertently directed only against common carriers by railroad. Carriers by water subject to the interstate commerce act will be expected to comply with its terms. If they do not comply, an order will be entered.

Explaining Appendix B

Appendix B is merely a list of the commodities taking the rates on grain and grain products in numerous present tariffs, and the findings are not to be construed as prescribing Appendix D rates for all Appendix B commodities. The grain products list is left for the initial establishment of the carriers, subject to review in a suspension or complaint proceeding.

Arbitraries Permitted to Some Carriers

Present rates of the Wichita Northwestern, the Missouri & North Arkansas, and perhaps other lines are higher than the rates of other carriers in the same general territories by arbitrary amounts prescribed or approved in formal proceedings. These relations will not be disturbed. Nor do the findings contemplate the prescription of Appendix D rates for narrow-gage lines.

Distance Rates Subordinated to Group Rates and Rate-Break Combinations

The application of the interior scales, or other distance test, is to be subordinated, where conflicting therewith, to the prescribed rate-break combinations and group adjustments, and to groupings found necessary by the carriers to meet cross-country competition.

[fol. 242] Cancellation of Through Rates in Conflict with Rate-Break Combinations

Published through rates in conflict with rate-break combinations from territories from which rate-break combinations are prescribed will be ordered canceled.

Application of Proportional Rates Required from Primary Markets

The findings, at page 645,[2] do not prohibit the application of joint rates through primary markets, and transit balances beyond the markets, where proportional rates from the markets are not in effect. The requirement merely is that a proportional rate, once established, must be charged,

[2] References are to page numbers of the original report.

and can not be defeated by a lower transit balance between the same points. For example, transit balances are prohibited from Omaha to Chicago, because there is a proportional rate from Omaha to Chicago, but they are not prohibited from Omaha to north Pacific coast territory, where proportional rates are not in effect (see pages 674-675). But the exclusive application of proportional rates to territories intermediate to terminal markets to which proportionals now apply is permissible. For example, the proportional rate from Omaha to Chicago may be graded back to interior points in Illinois and Iowa to which there are today proportional rates in some instances and not in others, thereby eliminating varying transit balances to a given destination, and making a constant factor, in the form of a proportional rate, to each destination, regardless of the point of origin back of the market. The proportionals thus established from Omaha should not exceed 5.5 cents for the first 50 miles and should grade up at the rate of 1.5 cents for each additional 50 miles until the terminal proportional rate of 15 cents is reached in the Chicago group. This basis will result in combinations on Omaha approximately equal to the rates that would be applicable under the overhead working scale used in checking in the prescribed rates. The same maximum rate for the first 50 miles and the same general method of grading will govern the other western trunk-line proportionals. The grading back of the proportionals from the markets to the Texas and Louisiana groups will take into account the average mileages used in the groupings, and will reasonably relate the rates to the groups and to intermediate territories.

Exceptions to Meet Carrier Competition

The findings, at page 645, cover instances of one rate-break route competing with a lower route, either direct or [fol. 243] rate break. For example, the direct rate from a point in southeastern South Dakota to Chicago may be applied through Minneapolis on a continuous shipment, but the higher combination on Minneapolis must be charged on a shipment stopped at Minneapolis or other intermediate point on that route; the combination on Omaha from a point in Nebraska to Chicago may be applied through Kansas City on a continuous shipment, but the higher combination on Kansas City must be charged on a shipment stopped at Kansas City or other intermediate point on that route; the

proportional rate from Omaha to Chicago may be applied through Kansas City on a continuous shipment, but the higher combination of proportional rates to and from Kansas City must be charged on a shipment stopped at Kansas City or other intermediate point on that route; or the rate of the Missouri Pacific from Kansas City to Little Rock or Memphis, through Carthage, Mo., may be applied over its route through St. Louis on a continuous shipment, but the higher combination on St. Louis must be charged on a shipment stopped at St. Louis or other intermediate point on that route. The purpose of the finding is to prevent the defeat of the proportional rate by a transit balance lower than the proportional, but not otherwise to curtail carrier competition. The restriction is laid on the intermediate points other than the market, as well as upon the market, in order not to discriminate against the market in favor of the other intermediate points. The reason for the restriction as to all intermediate points would be apparent if the combination rate over the higher route were published as an overhead rate, for then, manifestly, transit would be accorded only at the higher rate applicable over that route.

The fact that the market may draw grain from a wider territory than the other intermediate points hardly affords justification for a difference in treatment. Nor would there be justification for permitting a stop at the market and other intermediate points for milling and not for merchandising.[3] But transit may be permitted at an intermediate point other than the market, and not at the market, on the higher route when the intermediate transit point on the higher route is also a transit point on the direct route. For example, transit may be permitted at Fort Dodge, Iowa, but not at Omaha, on a shipment from Sioux City to Chicago, through Omaha and Fort Dodge, to meet the competition of a direct route from Sioux City through Fort Dodge to Chicago, with transit at Fort Dodge; or at Mankato, but not at Omaha or Sioux City, on the route from Kansas City to Minneapolis, through Omaha, Sioux City and Mankato, to meet the competition of a direct route from Kansas City, [fol. 244] through Des Moines and Mankato, with transit at Mankato; or at Cedar Rapids, but not at Omaha, on the route

[3] This means merchandising requiring unloading and reshipment. The finding does not prohibit inspection and/or reconsignment in the original car.

from Kansas City, through Omaha and Cedar Rapids to Chicago, to meet the competition of a direct route from Kansas City through Cedar Rapids to Chicago, with transit at Cedar Rapids.

Rate Break Through Minneapolis-St. Paul

Clarification is required of another phase of the rate-break combinations, illustrated by the adjustment at Minneapolis and St. Paul. Both the inbound flat rates and the outbound proportionals are the same at these markets, and there is no proportional between the markets. Transit will be permissible at St. Paul under the inbound flat rate to Minneapolis, and at Minneapolis under the inbound flat rate to St. Paul, because there will be no proportional rate between these markets to be defeated. It will not be permissible at St. Paul under the proportional rate from Minneapolis to Chicago, or at Minneapolis under the proportional rate from St. Paul to Chicago, because the proportional rate from the intermediate transit point would be defeated. In other words, the surrender of an inbound expense bill at Minneapolis, for example, can be only for the purpose of securing the benefit of a transit balance or a proportional beyond Minneapolis, and will accordingly permit of the further movement beyond Minneapolis under the transit balance of the inbound flat rate to St. Paul, or under the proportional rate from Minneapolis to Chicago, but not under a proportional rate from Minneapolis to St. Paul, because there is no such proportional. The transportation from Minneapolis to St. Paul must therefore be at the transit balance of the inbound flat rate to St. Paul, or at the flat rate from Minneapolis to St. Paul. If at the latter, the surrender of the inbound expense bill at St. Paul will not permit of the retroactive application of the proportional rate from Minneapolis to Chicago, with transit at St. Paul, because the transit balance beyond St. Paul, remaining after deduction of the flat rate from Minneapolis to St. Paul from the proportional rate from Minneapolis to Chicago, will be lower than the proportional rate from St. Paul to Chicago.

Rate Break Through Duluth-Minneapolis

The situation at Duluth and Minneapolis differs from that at St. Paul and Minneapolis in that, while the proportional rate from Duluth to Chicago is the same as from Minneapolis

to Chicago, there is a proportional rate between Duluth and Minneapolis. Surrender of inbound billing at Duluth will therefore permit of outbound shipment under the proportional rate to Minneapolis or to Chicago. Upon a second [fol. 245] stop at Minneapolis the outbound proportional from Minneapolis to Chicago must apply, because the application from Minneapolis to Chicago of the transit balance of the proportional rate from Duluth to Chicago, remaining after deduction of the proportional rate from Duluth to Minneapolis, will be prohibited, because it will defeat the higher proportional rate from Minneapolis to Chicago. In the absence of a proportional rate from Duluth to Minneapolis, transit would be permissible at Duluth under the inbound flat rate to Minneapolis. The granting of such transit would doubtless inspire requests for similar transit at Minneapolis under the inbound flat rate to Duluth, discussed at pages 675-676, under "Minneapolis transit."

Minimum Inbound Rates to Markets to Avoid Fourth-Section Departures

At page 662 is a discussion of "Protection of intermediate flat rates under the rate break." In the prescribed adjustment some of the combinations of flat rates to the markets and proportional rates beyond, from stations within a radius of perhaps 80 miles of the markets, are less than the through rates from those stations, or less than the flat rates from the markets on which the combinations are made, or both, in violation of the fourth section. For example, the flat rate from Fremont, Nebr., to Omaha is 8.5 cents, the proportional rate from Omaha to Chicago 15 cents, the through rate from Fremont to Chicago 26 cents, and the flat rate from Omaha to Chicago 24 cents. Both the through rate from Fremont and the flat rate from Omaha therefore exceed the combination on Omaha. These departures from the fourth section could be corrected either by reducing the through rate from Fremont and the flat rate from Omaha, or by increasing one or both of the components of the combination. If the through rate from Fremont were reduced to the combination basis, the flat rate from Omaha would still be higher than the combination on Omaha, and therefore higher than the reduced through rate from Fremont. The flat rate from Omaha can not be reduced to the combination basis without other widespread reductions, and without a general dis-

ruption of rates from territory between Omaha and Chicago. The situation as to the flat rate from Omaha could be dealt with by making the proportional rate from Omaha apply only in connection with an inbound rate to Omaha high enough to make the combination on Omaha equal the flat rate from Omaha, or by indicating by tariff symbol after the proportional from Omaha (by so-called padding) that on shipments from Fremont the proportional rate from Omaha will be increased sufficiently to make a minimum through rate equal to the flat rate from Omaha.

[fol. 246] In either event the grain from Fremont could not move to Chicago at the lower combination on Omaha shown in the tariff, and the value of the Fremont grain on the Omaha market would be depressed, or made uncertain, because of the uncertainty as to its final destination. A minimum inbound flat rate of 10 cents to the Missouri River markets (equal to the western trunk-line interior scale rate for 70 miles (would avoid fourth-section departures on shipments through those markets to Chicago and St. Louis. An inbound flat rate of less than 10 cents to these markets will not be required. The through rates from points back of the markets will be made on the combination basis. An adjustment with all inbound flat rates as high as 10 cents would not only remove fourth-section departures, but would also result in a proper gradation of rates from the country stations and intermediate points, including the flat rates from the markets.

Minimum Inbound Flat Rate of 10 Cents to Minneapolis and Duluth

To Duluth and Minneapolis an inbound flat rate of less than 10 cents will not be required. The combination of an inbound flat rate of 10 cents to Minneapolis and the proportional rate of 12 cents to Chicago, as hereinafter revised, would equal the flat rate of 22 cents from Minneapolis to Chicago and meet the requirements of the fourth section.

Restriction of Proportional Rate from Kansas City to Texas

A departure from the fourth section will result from a flat rate of 35 cents from Kansas City to Texas Group 3 higher than the combination of the minimum inbound flat rate of 10 cents to Kansas City and the proportional rate of 21 cents beyond. Neither an inbound flat rate of 14 cents,

a flat rate from Kansas City of 31 cents, nor a proportional rate from Kansas City of 25 cents, required to clear the fourth section, is justified. The proportional rate of 21 cents, in connection with an inbound flat rate of less than 14 cents, may be increased sufficiently to make a minimum through rate of 35 cents.

Restriction of Proportional Rate from St. Louis to New Orleans

Because of its effect upon the relation of the combinations through St. Louis, Cairo, and Memphis to the Southeast, to which territory rates are in issue in Part 7-A, as yet unheard, and because also of the relation between the rates to [fol. 247] St. Louis and Chicago on Illinois grain, a minimum inbound flat rate of 10 cents to St. Louis, except from Missouri west and south of St. Louis, is not justified. An increase in the proportional rate of 19 cents from St. Louis to New Orleans is also not justified. The proportional rate of 19 cents, in connection with an inbound flat rate of less than 10 cents, may be increased sufficiently to make a minimum through rate of 29 cents. The flat rate from St. Louis to New Orleans will be ordered reduced to 29 cents, in observance of the fourth section.

Restriction of Proportional Rate from St. Louis to Western Louisiana

Louisiana on and east of the line of the Rock Island from Randolph south through Ruston, Alexandria, and Eunice is grouped with New Orleans, in respect of both the flat and the proportional rate from St. Louis. To Louisiana west of that line, and to Texas, a fourth-section departure will result from a flat rate of 37 cents from St. Louis higher than the combination of the proportional rate of 23 cents from St. Louis and an inbound flat rate even as high as 10 cents to St. Louis. The flat rate from St. Louis to western Louisiana will be ordered reduced to 35 cents, and the proportional rate of 23 cents, in connection with an inbound flat rate of less than 12 cents, may be increased sufficiently to make a minimum through rate of 35 cents to western Louisiana; and, in connection with an inbound flat rate of less than 14 cents, may be increased sufficiently to make a minimum through rate of 37 cents to Texas, in observance of the fourth section.

Flat Rates from Pine Bluff and Little Rock to Louisiana and Texas

Flat rates from Pine Bluff and Little Rock, Ark., to the Louisiana and Texas groups will be less than the flat rates from St. Louis by the amount of the proportional rates to Pine Bluff and Little Rock from St. Louis.

Interior Scales Inapplicable for Charges of Less than 10 Cents

In view of the findings herein in respect of a minimum inbound rate of 10 cents to the rate-break markets, a rate of less than 10 cents under the prescribed interior scales will also not be required. This will avoid undue preference of shippers under these scales, and undue prejudice to shippers under the prescribed rates to the rate-break markets, or under specific rates made in reasonable relation to the latter rates, and will permit of practicable small-group adjustments for short hauls, and tend toward a general simplification and rounding out of the grain-rate adjustment as a whole.

[fol. 248] Proportional Rate from Minneapolis to Chicago

The prescribed proportional rate of 11 cents from Minneapolis to Chicago is too low by comparison with the other prescribed proportionals in western trunk-line territory, and will be ordered increased to 12 cents. This revision will result in a corresponding revision of the combinations on Minneapolis from points on and north of the line of the North Western from Mankato to Pierre (see page 662), and will bring about a better relation between these combinations and the direct rates to Chicago from southern South Dakota, southern Minnesota, and northwestern Iowa.

Proportional Rate from Minneapolis to Duluth

The increase in the proportional rate from Minneapolis to Chicago from 11 to 12 cents will require an increase in the proportional rate from Minneapolis to Duluth from 4.5 to 5.5 cents, in order to make a proper relation between the Minneapolis combinations to Duluth and the direct rates to Milwaukee and Chicago from south of the Mankato-to-Pierre line described, and in order also to preserve the present relation between the proportional rate from Min-

neapolis to Duluth and from Minneapolis to Chicago, and the present relation between the rail-lake-and-rail routes through Lake Superior and Lake Michigan ports.

Minneapolis Rate-break Territory to Duluth Redefined

Owing to the necessities of cross-country competition on the lines of the Northern Pacific, the Minneapolis, St. Paul & Sault Ste. Marie and the Great Northern, the finding, at page 663, that through rates to Duluth will be combinations on Minneapolis from on and south of the line of the Great Northern west from Minneapolis through Wilmar and Yarmouth, Minn., to Forbes, N. Dak., including points on the main line of the Milwaukee west from Minneapolis through Appleton, Minn., and Aberdeen, S. Dak., to and including Montline, N. Dak., is modified to make the through rates to Duluth combinations on Minneapolis from on and south of the Great Northern west from Minneapolis through Willmar, to but not including Tintah, Minn.; thence west by imaginary line to the Minnesota-North Dakota State line just south of Fairmont, N. Dak.; thence southwesterly by imaginary line to the South Dakota-North Dakota State line just east of La Mars, N. Dak.; thence west on the State line to the point of its intersection by the Milwaukee just west of Lemmon, S. Dak.; thence on and south of the line of the Milwaukee west to and including Montline, N. Dak.

[fol. 249] Proportional Rates from Minneapolis to Missouri River Markets

The prescribed proportional rates to Minneapolis are 8.5 cents from Sioux City, 11.5 cents from Omaha, and 15.5 cents from Kansas City. No proportional rates were prescribed in the reverse direction from Minneapolis to these other markets. The movement from Minneapolis to the Missouri River markets is mainly of grain products, and the rates, because of the lighter volume and loading of the grain products than of the grain, may properly be higher than in the reverse direction. Rates from Minneapolis of 11.5 cents to Sioux City, 14.5 cents to Omaha, and 17 cents to Kansas City will be ordered. The rate to Kansas City would be 18.5 cents if the relation of the Missouri River markets in the reverse direction were to govern; but the rate of 17 cents hereinafter prescribed from Minneapolis to St. Louis will be the maximum from Minneapolis to Kansas City.

Proportional Rates from Duluth to Missouri River Markets

No proportional rates were prescribed from Duluth to Sioux City, Omaha, and Kansas City. The combinations on Minneapolis will apply.

Proportional Rates from Minneapolis to Peoria and St. Louis

No proportional rates were established for this transportation. The present proportional from Minneapolis to Peoria is the same as from Minneapolis to Chicago, and continuation of that relation will be ordered. The present proportional from Minneapolis to St. Louis is the combination on Peoria. A proportional rate of 17 cents will be required, and will be comparable with the prescribed proportional of 16 cents from Sioux City to St. Louis.

Proportional Rates from Duluth to Minneapolis, Chicago, Peoria, and St. Louis

No proportionals were prescribed for this transportation. The present proportional from Duluth to Minneapolis is the same as from Minneapolis to Duluth, and the present proportional from Duluth to Chicago the same as from Minneapolis to Chicago. Continuation of these relations will be ordered. The present proportional from Duluth to Peoria is the same as from Minneapolis to Peoria, and the present proportional from Duluth to St. Louis the same as from Minneapolis to St. Louis. Combinations on Minneapolis will be ordered from Duluth to these markets.

[fol. 250] Proportional Rate from Peoria to St. Louis Canceled

To-day, grain from northern Iowa and the Missouri River markets can reach the Southeast through Peoria on the St. Louis combination, by reason of transit on the inbound flat rate to St. Louis (see pages 667-668), which is less than the Peoria combination to St. Louis. The findings prohibit transit at Peoria on the rate to St. Louis, because the transit balance would defeat the proportional rate from Peoria to St. Louis. The result will be that the Peoria combination will place the Peoria market at a disadvantage in competition with St. Louis. The proportional rate from Peoria to St. Louis will be ordered canceled. This will enable

Peoria to continue to transit at the inbound flat rate to St. Louis, because there will be no proportional rate from Peoria to St. Louis to be defeated.

Des Moines Proportional Rates Canceled

At page 669, it is suggested that the chief effect of the proportional rates from Des Moines seems to be to complicate the general proportional rate adjustment through the primary markets, rather than to help Des Moines, and that Des Moines could doubtless operate as well under transit as under proportional rates. The merit in that suggestion is emphasized upon an attempt to check in the prescribed rates. The necessity for "padding" is more pronounced at Des Moines than at the other markets, and will not be obviated by the minimum inbound flat rate of 10 cents permitted to the Missouri River markets, Minneapolis, and Duluth. The interests of Des Moines will be better served by an adequate adjustment of joint rates with transit, and the proportional rates from Des Moines will accordingly be ordered canceled.

Proportional Rate Between Kansas City and St. Joseph Canceled

The proportional rate between Kansas City and St. Joseph will be ordered canceled. Except from immediately contiguous territory the inbound flat rates are the same to both markets. The outbound proportionals are also the same. For several years the proportionals between these markets have been but little used, because of the use of transit. With the cancellation of the proportional rate between these markets the situation in respect of transit in connection with the rate-break will be identical with that hereinbefore discussed at St. Paul and Minneapolis.

The present situation at St. Joseph and Kansas City differs from that at Omaha and Kansas City, or at Sioux City and Omaha, or at Minneapolis and Duluth, in that the proportionals between the latter markets are actual com- [fol. 251] ponents of both the inbound and outbound rates to or from one of the markets through the other, whereas the proportionals between St. Joseph and Kansas City are not so used, both the inbound flat rates and the outbound proportionals being usually the same, as already stated.

Proportional Rates from Memphis to Little Rock and from Memphis and Cairo to Texas Groups Canceled

The proportional rate from Memphis to Little Rock will be ordered canceled. This will permit of the application of the proportional rate from St. Louis to Little Rock, with transit at Memphis, because there will be no proportional from Memphis to Little Rock to be defeated by a lower transit balance.

Proportional Rates from Memphis and Cairo to Texas Groups Canceled

The proportional rates from Memphis and Cairo to Texas groups will be ordered canceled, and these markets will transit under the proportional rates from St. Louis to the Texas groups.

Equalization of Cairo with St. Louis and Memphis to Louisiana West of the Mississippi

To Louisiana west of the Mississippi River the maintenance of proportional rates 3 cents from Cairo and 9 cents from Memphis less than from St. Louis, designed to effect an equalization of through rates in connection with inbound rates 3 cents to Cairo and 9 cents to Memphis higher than to St. Louis, will be required.

St. Louis-Chicago Equalization to the East

The prescribed proportional rates of 9 cents from Kansas City to St. Louis and 15 cents from Kansas City to Chicago disrupts the long-standing equalization of St. Louis and Chicago from the Missouri River to trunk-line territory (pages 635-636) under which the inbound rate to St. Louis is 4 cents less than to Chicago, and the outbound rate from St. Louis 4 cents higher than from Chicago, inasmuch as the inbound rate from Kansas City to St. Louis will be 6 cents less than to Chicago and the outbound rate from St. Louis 4 cents higher than from Chicago. Maintenance of the equalization could not be required on domestic shipments, because the domestic rates east of Chicago and St. Louis were not in issue. It was assumed that the equalization would be voluntarily continued by the eastern lines pending an appropriate proceeding in respect of the eastern rates.

[fol. 252] Illinois Specifics

Illinois grain shipped to Chicago on the so-called specifics, discussed at page 668, is reshipped largely to the East. Illinois grain shipped to St. Louis is reshipped largely to the Southeast. An equalization of St. Louis to the East with Chicago to the East, in respect of Illinois grain, by the establishment, for example, of proportional rates from St. Louis, applicable only on Illinois grain, or of proportional rates from Illinois to St. Louis, applicable only on shipments to the East, would therefore not place St. Louis on a parity with Chicago in respect of the final destination territory most important to St. Louis.

Flat rates from Illinois to St. Louis, to the extent they exceed the Illinois lake specifics to Chicago for like distances, are unreasonable, and the present relation between the rates to St. Louis and the specifics to Chicago, from Illinois, subjects St. Louis to undue prejudice and disadvantage and gives to Chicago an undue preference and advantage.

Basis Prescribed for Rates from On and South of the Union Pacific in Kansas to Omaha

Rates to Omaha 6 cents higher than to Kansas City will be required from on and south of the Union Pacific in Kansas, to correspond with rates to Kansas City 6 cents higher than to Omaha from the North Platte region on and north of the Union Pacific in Nebraska, from which the rates to Kansas City are combinations on Omaha.

Kansas to Southern Missouri (Investigation and Suspension Docket No. 3278)

The findings as to these rates, at pages 673-674, in so far as they condemn the proposed schedules, are affirmed. They are modified to require the establishment of rates, except from points in extreme southern Kansas from which the routes through Kansas City would be unduly circuitous, by combination on Kansas City.

Concerning Certain of the Southwestern Rates

Rates from border points in extreme southern Kansas, such as Kiowa, Elkhart, Liberal, and Englewood, to Texas and Louisiana groups will be related to the prescribed rates from contiguous points in Oklahoma, such as Alva, Guymon,

Hooker, Forgan, and Buffalo, rather than be controlled by any relation with the combination on Kansas City.

Rates from Sayre, Okla., Benonine, Tex., and certain other points in Texas to the southwestern portions of [fol. 253] Groups 1 and 2 in Texas will be ordered established on a basis to avoid fourth-section departures resulting from the division of Texas Groups 1 and 2 by an east-and-west line on shipments from Oklahoma, and by a north-and-south line on shipments from Texas.

The prescribed rates from Hugo, Durant, Ardmore, Muskogee, and Tulsa to the Louisiana groups will be ordered increased from 1 to 2.5 cents, in avoidance of fourth-section departures resulting from lower rates from these points than from intermediate northern Texas points to the same destinations, or resulting from lower rates from these points to the Louisiana groups than to the intermediate Texas groups.

In the interest of a better relation between the point-to-point rates and the rates to the Texas groups the description of Texas Group 1, at page 664, is modified to make the last five words read "to but not including Kirkland, Tex.," in lieu of "to but not including Memphis."

Sheridan, Wyo., to Destinations Routing Through Denver and Omaha

The finding, at page 680, that rates from Sheridan, Wyo., are unreasonable to the extent they exceed the contemporaneous rates from Billings, Mont., by more than 5 cents to California and north Pacific coast terminals, and the contemporaneous rates from Denver by more than 15 cents to the East and Southwest, is modified to make the rates from Sheridan 15 cents over Denver to destinations in Arizona and western New Mexico routing through Denver, and 34 cents over Omaha to destinations in the Southwest, Southeast, and East routing through Omaha.

From Montana to Minneapolis and the North Pacific Coast

Modification is made of the specific rates prescribed in Appendix D from main and branch line points in Montana, in the Judith Basin and Gallatin Valley, and in the so-called Great Northern triangle territory, referred to at page 680. These combined areas embrace roughly the territory bounded by the east-and-west line of the Great Northern

from Shelby to Havre, on the north, thence by a line southeastwardly from Shelby to Great Falls, and southwestwardly from Havre to Great Falls, thence all main and branch line points south and east of Great Falls on the Great Northern, Milwaukee, and Northern Pacific, including such points as Lewiston, Winfred, Roy, Winnet, Judith Gap, Harlowton, Livingston, Bozeman, Neihart, and Cascade. From all of these points, as a group, rates of 37.5 cents to Seattle and Portland, and 41.5 cents to Minneapolis and Duluth, will be required. Some increases will result, the heaviest ones from 35 cents to 37.5 cents from Great [fol. 254] Falls to Seattle, and from 34.5 cents to 37.5 cents from Shelby to Seattle. The prescribed rates of 35 cents from Great Falls and 34.5 cents from Shelby are typographically incorrect, and should have been 36.5 cents. The resulting increase to Seattle is therefore really only 1 cent. Offsetting reductions will result from branch-line points, and the average general result will be a slight reduction. The revision will largely preserve the present grouping, equalize main and branch line shippers and cross-country points on competing lines, and tend toward a more stable adjustment.

Montana to California

At page 680 rates from central and western Montana were prescribed on the basis of arbitraries over Pocatello, Idaho, of 15 cents from Havre, Shelby, Billings, Lewiston, Great Falls, and Harlowton, 11 cents from Helena, and 8 cents from Butte, resulting in rates from Great Falls, a typical point in the center of the group, of 55.5 cents to San Francisco and 57.5 cents to Los Angeles. The finding as to this adjustment is modified to make to all of California, as one destination group, rates of 55 cents from Montana points on and west of the Great Northern from Gateway to Columbia Falls, thence by air line passing just west of Augusta through Helena to Butte, and 62 cents from Montana points east of that line to and including points on and west of a line drawn from Havre through Lewiston to Billings.

The short routes from Montana to most of California, including San Francisco and Los Angeles, are through Pocatello, and the carriers would be technically within their rights in establishing the prescribed rates only over these routes. This would short haul the Montana lines, which

have their own rails westward through Spokane to Seattle and Portland and the long haul on shipments from Montana to California. The routes through Pocatello are longer, and the prescribed rates higher, to points in California north of San Francisco and Los Angeles than to either of these terminals, which would result in departures from the fourth-section over the routes through Seattle and Portland, because of the higher rates to the points intermediate to San Francisco and Los Angeles than to those terminals over these routes. The grouping of California destinations will avoid these latter fourth-section departures, and the revised rates, representing an average slight increase, will be high enough to warrant their application over the longer routes through Seattle and Portland, and will so apply.

The revised rates, applied over the routes through Seattle and Portland, will also enable millers in Montana, Wash- [fol. 255] ington and Oregon, grinding Montana wheat for shipment to California, more effectively to compete with flour shipped from Colorado, Nebraska, and Kansas to California, and will correct a maladjustment resulting from the prescribed rates from Montana being relatively lower than the prescribed rates from Colorado.

Idaho to California

From Idaho north and east of Pocatello the present rates are, and for many years have been, the same to San Francisco as to Los Angeles. The prescribed rates are a maximum of 2 cents less to San Francisco than to Los Angeles. To San Francisco the distance is 68 miles shorter over the Rogerson-Wells cut-off route than over the Ogden route. In recent cases, in view of the cost of operation over the cut-off route, rates based on the inclusion of the mileage over the Rogerson-Wells line at a constructive 150 per cent of the actual mileage were authorized. Idaho v. Oregon S. L. Co., 157 I. C. C. 501; State of Idaho v. Oregon Short Line R. Co., 171 I. C. C. 763. The constructive mileage from the Idaho territory here in question to San Francisco, using the constructive mileage from Rogerson to Wells, is only 21 miles shorter over the cut-off route than the actual mileage over the Ogden route. Using the same constructive mileage between Rogerson and Wells, and the shortest route to each point, the distance is 55 miles less to San Francisco than to Los Angeles. The differences in favor of

San Francisco in the prescribed rates are justified. It is to be expected that the prescribed rates from this Idaho territory to San Francisco will be made applicable, with the usual transit, over both the cut-off route and the Ogden route.

Big Bend District to Portland and Seattle

The finding in prescription of specific rates from the Big Bend district in Washington north of the Snake River to Portland and Seattle is modified to make four origin groups with the following rates:

From—	Portland	Seattle
	Cents	Cents
Group 1[1]	19.5	17
Group 2[2]	20.5	18
Group 3[3]	20.5	19.5
Group 4[4]	23	20

[fol. 256] The revised rates will represent both increases and reductions, but will average about the same as the prescribed rates.

The revision is necessitated by practical considerations of cross-country competition. For example, to Seattle a rate of 19 cents can not be maintained from Bruce, on the Northern Pacific, in competition with 15.5 cents across country from Novara, on the Milwaukee. The same is true of a rate of 17.5 cents from West Warden, on the Northern Pacific, in comparison with 16.5 cents from Warden, on the Milwaukee. Nor can this range of rates be applied from these four closely grouped stations.

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[1] Neppel, Wheeler, Ruff, Bassett Junction, Shrag, Warden, West Warden, Lind, Novara, Bruce, Connell, Cunningham, and intermediate stations.

[2] Odessa, Downs, Moody, Schoonover, Marcellus, Tokio, [illegible]-ville, Paha, Vassar, Ralston, Marengo, Emden, Macall, Revere, Lantz, and intermediate stations.

[3] Keystone, Sprague, Kline, Cheney, South Cheney, Croskey, Wells, Rockwell, Lamont, Rodna, Amber, Lavista, Malden, and intermediate stations.

[4] Four Lakes, Espanola, Lyons, Rearden, Davenport, Omans, Eleanor, Telford, Bluestem, Mohler, and intermediate stations.

Present rates are grouped from both north and south of the Snake River. The group adjustment south of the Snake was not disturbed. The revised group rates will harmonize better with the adjustment from south of the Snake for similar mileages, and will aid in the avoidance of fourth-section difficulties. This revision is in accordance with the suggestion at page 661 that reasonable groupings of origin and destination points are proper.

Longview, Wash., Arbitrary

The arbitrary of 0.5 cent over Portland to Longview, Wash., prescribed at page 686, will apply from southern Idaho as well as from south of the Snake River.

Transit

The criticism of transit, at page 653, while in a sense general, is directed specifically only to the number of transit stops permitted, the lack of reasonable limitation of out-of-line and competitive routes and back hauls, and the failure to cancel obsolete transit provisions that serve only to confuse, or to invite unreasonable transit requests, and does not require, or justify, a revision of general policing rules governing transit that are not the subject of this criticism. In fact, the finding specifically is that "A strict rule governing all phases of transit will not be undertaken at this time, but some limitations are here deemed necessary." The limitations then suggested in the text immediately following the quoted excerpt are confined to those specified above, in the finding that "present transit practices are unreasonable and unduly preferential and prejudicial to the extent they are not in harmony with the foregoing conclusions." Any proposed revision of general transit rules by the carriers to an extent greater than that suggested above will therefore not be properly attributable to our findings, and will be published in such a way as readily to permit of suspension and the retention of the present general transit rules for application in connection with the prescribed rates, in case protests so warrant.

[fol. 257] The limitation of the number of transit stops without separate charge to a maximum of two does not require the granting of two such transits in connection with each through shipment from origin to final destination. Nor does it affect the carriers' present exercise of judgment

as to the necessity for transit in specific instances, which will continue to be governed by the facts presented to the carriers. It is to be assumed that transit will not be unreasonably withheld as a result of these findings. Transits to the number of two, when granted, will be without separate charge. Nothing herein said is to be construed as suggesting, or warranting, the elimination of present transits not exceeding two, or as authorizing more than two transits without separate charge. In the consideration of transit upon this record ports of export (on export shipments) and terminal markets and gateways at the border of the western district and Illinois, such as Chicago, Peoria, St. Louis, Cairo, Memphis, and New Orleans, from which direct shipments are made into other territories, are to be considered as final terminal destinations, where the shipment under transit ends.

Transit on Mixed Feed

At page 656 the finding was that mixed feed containing other than the direct products of grain is a new commodity, on which flat rates from the point of manufacture should apply. The finding in principle is sound and would be given application if rates on mixed feed were being initially prescribed. But the present transit practices in connection with the manufacture of this commodity are the result of a gradual development over a period of years, the change suggested in the original report would be far reaching in its effects on the mixed-feed industry, and it should not be made unless imperatively required. The elimination of the unit rule will result in a diminution of the abuses which have focused attention on the mixed-feed industry in this proceeding. The finding as to transit on mixed feed will be rescinded, and the carriers will be permitted to give reasonable transit under the prescribed rates, pending a further and general investigation in this docket of the rates and transit practices on mixed feed throughout the entire country. The granting of transit on this commodity will be subject to the general transit limitations hereinbefore prescribed. For example, a transit stop for the manufacture of mixed feed will be considered as one of the two stops permitted without separate charge, but will be subject to a separate charge when it is the third stop from the origin of the grain.

[fol. 258] Storage in Transit

The finding, at page 657, prohibiting the storage in transit of manufactured products of grain which leave point of origin or intermediate transit point as manufactured products, for concentration at the storage point into outbound shipments, in straight or mixed carloads, and not for further processing, is rescinded. A separate charge of 2 cents per hundred pounds for each stop for storage in transit will be ordered. There will be no free stops for storage in transit. Storage in transit means storage beyond the point of manufacture. For example, a stop for milling of grain received direct from the country station of origin will be one of the two transits permitted without separate charge, but a stop of the bran or flour at a point beyond the point of manufacture, for storage, although only the second transit stop from the origin point of the grain, will be subject to a separate charge of 2 cents.

Prepared Flours

No specific finding was made in respect of phosphated flour or self-rising flour. Testimony was not offered as to these specific commodities. Phosphated flour is plain flour containing not more than one-half of 1 per cent of phosphate; self-rising flour is plain flour containing an average of not more than approximately 5 per cent of phosphate, salt, and soda. Transit on Phosphated Flour, 81 I. C. C. 738. Self-rising flour was accorded the same rate as plain flour in Aunt Jemima Mills Co. v. Director General, 83 I. C. C. 549. Respondents' tariffs permit transit on the basis of the grain-products rate on the entire weight of the shipment when the content of the commodities other than flour is not to exceed 5 per cent, and transit on the same basis on the weight of plain flour when the content of the commodities other than flour is in excess of 5 per cent and not in excess of 20 per cent, the flour rate from the transit point to be applied on the nontransit commodities. The record, with its lack of testimony as to these specific commodities, manifestly warrants no finding in revision of these transit practices.

Miscellaneous Corrections and Modifications

The foregoing requires an amendment of Appendix D. Tables substantially changed are reproduced, following the

text herein, as revised pages of the original report, separately from the text. Minor changes in other tables of the original report will be made as shown below. The page number, the caption of the table, the station, and the change in the prescribed rate in cents per 100 pounds are shown. Certain corrections in the text are also made.

[fol. 259] Page 663: In last paragraph, line 3, change "four groups" to "five groups."

Page 664: In table at top of page, change "Proposed" to "Prescribed," and the last item, under "Note," change to read: "Embraces the remainder of the present 20.5-cent group to the Colorado border. Cedar Bluff, Montezuma, and Sublite will be in the 18.5-cent group; Atwood, Santa Fe, Moses, and Hugoton in the 20-cent group; and Bird, St. Francis, Johnson, Rolla, and Elkhart in the 22-cent group."

Page 794: In table of "Proportional rates," item "To Louisiana Group 3 from Kansas City," change "41" to 37 [4] cents.

Page 797: Change caption of second table from "Colorado to Missouri River" to read "Colorado to Omaha-Kansas City"; eliminate item for Sedgwick; in Lucerne item change "29" to 28. In third table, in Deming item change "38" to 39.5; and change footnote 2 to read "Average of present rates of 53 and 56 cents."

Page 798: In table "Colorado to Texas Group 3," in Lamar item change "49" to 47. In table "From Colorado to Louisiana Group 3, etc.," in Lamar item change "54" to 52. Under table "From eastern Colorado transcontinental groups, etc.," change footnote 3 to read "Average of present rates of 53 and 56 cents."

Page 800: In table "Southern Idaho and Utah common points, etc.," in line for Mountain Home, under San Francisco, change "47" to 41.5, under Weed change "50.5" to 46.5, under Fresno change "49" to 44.5, under Bakersfield "51.5" to 48, under Santa Barbara "56" to 52.5. In line for St. Anthony, under Los Angeles change "48" to 46, under Fresno "44" to 47, under Santa Barbara "52.5" to 51.5. In line for Pocatello, under Fresno change "41.5" to 43.5, under Santa Barbara "47.5" to 48.5.

Page 802: In table "Southern Idaho to Seattle," in line for Bancroft change "37" to 38. In table "Iowa to Chi-

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[4] Change in present rate. Other changes are in the prescribed rates.

cago," in line for Estherville change "24" to 23, in line for Algona change "22" to 21.

Page 803: In table "Iowa to Minneapolis," in Storm Lake item change "16" to 17.5, in Sac City item "19.5" to 17.5, in Sioux City (local) "18" to 18.5. In table "Iowa to Kansas City," in Cherokee item "21.5" to 20, in Sheldon item "20.5" to 20.

Page 804: In table "Kansas to Chicago," in Olathe item change "24" to 25, in Ottawa item "25.5" to 25, in Dodge City, Wakeeney, Satanta, and Grainfield items "33" to 33.5. In table "Kansas to Kansas City," in Olathe item "7" to 10, in Ottawa item "8.5" to 10, in Dodge City, Wakeeney, [fol. 260] Satanta, and Grainfield items "18" to 18.5.

Page 805: In table "Kansas to Texas Group 3, etc.," in Kingman item change "37" to 34. In table "Kansas to Louisiana Group 3, etc.," in Kingman item "42" to 39.

Page 807: In table "Western and northern Missouri to Chicago," in Martinsburg item change "21" to 19, in Marysville item "20.5" to 24, in Wellsville item "21" to 19. In table "Western Missouri to Kansas City," in Carrollton item "9" to 10, in Harrisonville item "8" to 10, in Higginsville item "8.5" to 10, in Platte City and Plattsburg items "7.5" to 10, in Warrensburg item "9" to 10. In table "Western and northern Missouri to St. Louis," in St. Charles item "7" to 10.

Page 808: In table "From southeastern Missouri to St. Louis," in Belmont item change "16" to 17, in Melby item "16.5" to 17, in Anniston item "18" to 17, in Blackwell item "9" to 10, and eliminate Riverside and Koch items.

Page 809: In table "From southeastern Missouri to Memphis, Tenn.," eliminate Riverside item.

Page 810: In table "Nebraska to Chicago," in Lincoln, Fremont, Schuyler items change "26" to 25, in Columbus item "25.5" to 25. In table "Nebraska to Omaha," in Lincoln and Fremont items "8.5" to 10, in Schuyler item "9" to 10, in Columbus item "10.5" to 10.

Page 811: In table "Nebraska to Kansas City," in Lincoln item change "14.5" to 15, in Fremont item "14.5" to 16, in Schuyler item "15" to 16, in Columbus item "16.5" to 16.

Page 812: In table "North Dakota to Minneapolis-Duluth," in Antler item change "25" to 26, in Pembina item "22" to 21, in Dunseith item "26" to 25.

Page 813: In table "Oklahoma to Chicago," in Guthrie

and Kingfisher items change "34.5" to 34. In table "Oklahoma to Kansas City," in Guthrie and Kingfisher items "19.5" to 19.

Page 814: In table "Oklahoma to St. Louis," in Altus item change "33" to 32, in Anadarko item "39" to 29, in Chickasha item "39" to 29, in Guthrie and Kingfisher items "28.5" to 28. In table "Oklahoma to Texas Group 3, etc.," in Guymon item "36" to 37.

Page 815: In table "Oklahoma to Louisiana Group 3, etc.," in Ardmore item change "27.5" to 28.5, in Durant item "26" to 28.5, in Hugo item "24" to 26, in Mangum item "32.5" to 34, in Muskogee item "29" to 30.5, in Tulsa item "31" to 32.

[fol. 261] Page 816: In table "Washington and Oregon south of Snake River to Seattle," in Wayland item change "19" to 19.5.

Page 818: In table "Texas to Kansas City," in Floydada item change "30" to 29.5, in Stratford item "24" to 26. In table "Texas to Texas Group 3, etc.," in Floydada item "31" to 29.5.

Page 819: In table "Texas to Memphis," in Ballinger item change "34.5" to 36. In table "Texas to Vicksburg," in Ballinger item "29.5" to 31. In table "Texas to Louisiana Group 3, etc.," in Ballinger item "34.5" to 36.

Page 821: In table "Wisconsin to Milwaukee," in Kenosha item change "7.5" to 8, in Waukesha item "6" to 8.

Page 822: Change table footnote 1 to read: "To be applied for miscellaneous interior movements; that is, for movements other than to (or via) primary markets, ports of export, and other points to which rates are prescribed herein, either directly or by reasonable relation. Distances are to be computed over routes via which carload traffic can be interchanged without transfer of lading, and between which points in differently rated groups the highest scale will apply."

The prescription of a key-point rate from Klamath Falls, Oreg., to Portland, Oreg., was inadvertently omitted. A rate of 24 cents will be ordered.

We find that the present rates and practices of respondent carriers, to the extent they do not conform to the rates and practices required in the original report and order, as corrected, modified, and supplemented herein, are unreasonable and unduly prejudicial. The original report and order are corrected, modified, and supplemented accordingly.

McMANAMY, Commissioner, concurring in part:

I approve the correction of obvious errors relating to mileage and rates which in the process of preparation unavoidably crept into the report, also the interpretations herein made of our former report and order. I do not approve other changes made in rates, groupings, or transit rules.

Commissioner Mahaffie did not participate in the disposition of this case.

[fol. 262]

APPENDIX

REVISION OF PAGE 794

Proportional Rates

[In cents per 100 pounds]

	Prescribed	Revised
To Duluth from—		
Minneapolis	4.5	5.5
Sioux City	13	14
Omaha	16	17
Kansas City	20	21
To Minneapolis from—		
Sioux City	8.5	8.5
Omaha	11.5	11.5
Kansas City	15.5	15.5
Duluth	..	5.5
To Chicago from—		
Minneapolis	11	12
Sioux City	15	15
Omaha	15	15
Kansas City	15	15
Duluth	..	12
To Peoria from—		
Minneapolis	..	12
Duluth	..	17.5
To St. Louis from—		
Sioux City	16	16
Omaha	13	13
Kansas City	9	9
Minneapolis	..	17
Duluth	..	22.5
To Sioux City from—		
Minneapolis	..	11.5
Duluth	..	17
To Kansas City from—		
Omaha	6	6
Minneapolis	..	17
Duluth	..	22.5
To Omaha from—		
Sioux City	3	3
Minneapolis	..	14.5
Duluth	..	20
To Memphis from—		
Omaha	22	22
Cairo	..	..
Kansas City	16	16
St. Louis	9	9
To New Orleans from—		
Cairo	..	16
Memphis	10	10
St. Louis	19	19
Kansas City	26	26
Omaha	32	32
To Texas Group 3 from—		
Kansas City	21	21
Omaha	27	27
St. Louis	23	23
To Louisiana Group 3 from—		
Kansas City	[3] 26	[3] 26
Omaha	[3] 32	[3] 32
St. Louis	[4] 23	[4] 23
Memphis	..	[4] 14
Cairo	..	[4] 20
To Little Rock from—		
Kansas City	16	16
Omaha	22	22
St. Louis	10	10
Cairo	..	7
To Texarkana from—		
Kansas City	16	16
Omaha	22	22
St. Louis	16	16
Cairo	..	13
Memphis	..	7

[3] West of the Rock Island from Randolph south through Ruston, Alexandria, and Eunice 3 cents less.

[4] On and east of above line 4 cents less.

REVISION OF PAGE 803

Iowa to Omaha

	Prescribed	Revised		Prescribed	Revised
Manning	9	10	Clarinda	9	10
Storm Lake	14	14	Centerville	15.5	15.5
Fort Dodge	13	13	Creston	11	11
Cherokee	15.5	14	Chariton	13.5	13.5
Sheldon	14.5	14	Rock Rapids	20.5	15
Algona	15	15	Boone	13	13
Hawarden	13	13	Merrill	13	13
Luverne	16	15	Onawa [1]	17.5	10
Shenandoah	8	10			

[1] Present rate on wheat from Onawa is 11 cents instead of 19 cents, and on corn 10 cents instead of 17 cents as shown in the report.

[fol. 263]

REVISION OF PAGE 804

Iowa to Texas Group 3, including Galveston and Houston

	Prescribed	Revised		Prescribed	Revised
Storm Lake	41.5	41	Shenandoah	35	35
Fort Dodge	40.5	40	Clarinda	34.5	34.5
Cherokee	42.5	41	Centerville	36.5	36.5
Sheldon	42	41	Creston	35	35
Algona	40.5	42	Chariton	36.5	36.5
Indianola	37.5	37.5			

REVISION OF PAGE 806

Minnesota to Duluth

	Prescribed	Revised		Prescribed	Revised
Albert Lea	15.5	16.5	Miloma	18	19.5
Appleton	17.5	19.5	New Ulm	16.5	16.5
Breckenridge	16.5	16.5	Ortonville	18.5	20.5
Crookston	17.5	17.5	Paynesville	15.5	15.5
Evansville	15.5	16.5	Pipestone	19.5	20.5
Fairmont	18	18.5	Red Wing	15	15.5
Faribault	15.5	15.5	Rochester	16	17
Fergus Falls	15.5	15.5	Sauk Center	14.5	15
Glenwood	15.5	15.5	Staples	13	13
Glyndon	16.5	16.5	Tintah	19	16.5
Granite Falls	16.5	18.5	Willmar	15.5	16.5
Hanley Falls	17.5	18.5	Winona	16	17
Luverne	20	21	Winnebago	16.5	18.5
Mankato	16	15.5	Worthington	18.5	20.5
Marshall	18	19.5			

Minnesota to Chicago

	Prescribed	Revised		Prescribed	Revised
Albert Lea	21	21	Miloma	25	24
Appleton	24	26	New Ulm	21.5	23
Breckenridge	26.5	27.5	Ortonville	25	27
Crookston	29	30	Paynesville	21.5	23
Evansville	24	26	Pipestone	25	26
Fairmont	24	23	Red Wing	21	20
Faribault	21.5	21.5	Rochester	19.5	19.5
Fergus Falls	25	26	Sauk Center	22.5	24.5
Glenwood	24	25	Staples	24	25
Glyndon	27	28	Tintah	25.5	26.5
Granite Falls	24	25	Willmar	22	23
Hanley Falls	24	25	Winona	18.5	18.5
Luverne	25	25	Winnebago	22	22
Mankato	21	22	Worthington	25	24
Marshall	25	26	Minneapolis	22	22

[fol. 264]

Minnesota to Minneapolis

	Prescribed	Revised		Prescribed	Revised
Albert Lea	11	11	Miloma	14	14
Appleton	13	14	New Ulm	10.5	1.
Breckenridge	15.5	15.5	Ortonville	14	15
Crookston	18	18	Paynesville	10.5	11
Evansville	13	14	Pipestone	15	15
Fairmont	13	13	Red Wing	7.5	10
Faribault	8	10	Rochester	11.5	11.5
Fergus Falls	14	14	Sauk Center	11.5	12.5
Glenwood	13	13	Staples	13	13
Glyndon	16	16	Tintah	14.5	14.5
Granite Falls	13	13	Willmar	11	11
Hanley Falls	13	13	Winona	11.5	11.5
Luverne	15.5	15.5	Winnebago	12	13
Mankato	10	10	Worthington	14	15
Marshall	14	14			

REVISION OF PAGE 808

Missouri to Louisiana Group 3, including New Orleans

	Prescribed	Revised		Prescribed	Revised
St. Louis (local)	[1] 33	[2] 29	Carthage	[2] 36	[2] 36
Boonville [3]	....	....	Springfield	[2] 36	[2] 36
Sikeston	[1] 30	[1] 29	Kansas City (local)	[2] 40	[2] 37

[1] West of the Rock Island from Randolph, south through Ruston, Alexandria, and Eunice 4 cents higher.
[2] West of the above line 3 cents less.
[3] Boonville intentionally eliminated.

REVISION OF PAGE 809

Montana to Minneapolis-Duluth

	Prescribed	Revised		Prescribed	Revised
Billings	37	37	Judith Gap	40	41.5
Bozeman	41	41.5	Kalispell	46	46
Culbertson	30	30	Laurel	37.5	37.5
Cut Bank	42	42	Lewiston	40.5	41.5
Forsyth	34	34	Livingston	40.5	41.5
Glasgow	34	34	Missoula	46.5	46.5
Great Falls	41.5	41.5	Ringling	40.5	41.5
Hardin	38.5	38.5	Shelby	41	41.5
Harlowton	38.5	41.5	Terry	31.5	31.5
Havre	38	41.5	Yates	29.5	29.5
Helena	43.5	43.5	Ryegate	38	38

Montana to Chicago

	Prescribed	Revised		Prescribed	Revised
Billings	48	49	Judith Gap	51	53.5
Bozeman	52	53.5	Kalispell	57	58
Culbertson	41	42	Laurel	48.5	49.5
Cut Bank	53	54	Lewiston	51.5	53.5
Forsyth	45	46	Livingston	51.5	53.5
Glasgow	45	46	Missoula	57.5	58.5
Great Falls	52.5	53.5	Ringling	51.5	53.5
Hardin	49.5	50.5	Shelby	52	53.5
Harlowton	49.5	53.5	Terry	42.5	43.5
Havre	49	53.5	Yates	40.5	41.5
Helena	54.5	55.5	Ryegate	49	50

[fol. 265]

REVISION OF PAGE 810

Montana to Seattle-Portland[1]

	Prescribed	Revised		Prescribed	Revised
Billings	38	38	Judith Gap	37.5	37.5
Bozeman	34	37.5	Kalispell	30	30
Culbertson	45	45	Laurel	37.5	37.5
Cut Bank	34	34	Lewistown	38.5	37.5
Forsyth	41	42	Livingston	34.5	37.5
Glasgow	42	42	Missoula	27	27
Great Falls	34	37.5	Ringling	38	37.5
Hardin	40.5	40.5	Shelby	34.5	37.5
Harlowton	37	37.5	Terry	40.5	43.5
Havre	37.5	37.5	Yates	49.5	46.5
Helena	31.5	31.5	Ryegate	34	37.5

[1] Rates in report were specifically prescribed to Seattle only.

REVISION OF PAGE 812

North Dakota to Chicago

	Prescribed	Revised		Prescribed	Revised
Williston	28.5	39.5	Tuttle	33	34
Northgate	37	38	Pingree	31.5	32.5
Rugby	34	35	Carrington	31.5	32.5
Antler	36	38	Jamestown	30.5	31.5
Devils Lake	32	33	Esmond	34	35
Pembina	33	33	Hannah	33	34
Dunseith	37	37	Conway	31	32
Walhalla	32.5	33.5	Northwood	30	31
Grand Forks	30	31	Portland	29.5	30.5
Fargo	27.5	28.5	Grafton	31	32
Killdeer	28	39	Sanborn	30	31
Turtle Lake	35	36	Marion	30.5	31.5
Beach	39	40	Casselton	28	29
Scoria	38	39	Milnor	28.5	29.5
Dickinson	37	38	Sharon	30	31
Hebron	36	37	Neche	32	33
Sykeston	32	33			

REVISION OF PAGE 817

South Dakota to Chicago

	Prescribed	Revised		Prescribed	Revised
Yankton	24	26	Huron	29.5	30
Scotland	25.5	27	Redfield	31	31
Tyndall	25.5	27	Watertown	27	28
Sioux Falls	26	26	Faulkton	31	32
Parker	26	27	Aberdeen	29	30
Wagner	27	28	Roscoe	31	32
Salem	27	27	Pierre	34	34
Madison	28	28	Presho	34	33
Vilas	28	28	Stamford	36.5	36
Wentworth	28	28	Imlay	33.5	38
Mitchell	27	28	Rapid City	40	40
Platte	28	29	Faith	38.5	39.5
Plankinton	28.5	29	Isabel	36.5	37.5
Stickney	26	29	Van Metre	36.5	36.5
Tripp	26.5	27	Powell	38	39
Woonsocket	29	29	Underwood	40.5	41
Arlington	29	28	Bonesteel	29	29
Wolsey	30	31	Gregory	30.5	30.5
Chamberlain	30.5	30.5	Winner	31	32.5

[fol. 266]

South Dakota to Minneapolis

	Prescribed	Revised		Prescribed	Revised
Yankton	18.5	19.5	Wolsey	19	19
Scotland	20.5	20.5	Chamberlain	24	24
Tyndall	20.5	20.5	Huron	18	18
Sioux Falls	16.5	16.5	Redfield	19	19
Parker	18.5	17.5	Watertown	16	16
Wagner	21	21.5	Aberdeen	18	18
Salem	17.5	17.5	Roscoe	20	20
Madison	18	17	Pierre	23	22
Vilas	18.5	18.5	Presho	27.5	26
Wentworth	16.5	17	Stamford	29	29
Mitchell	19	19	Imlay	31.5	31
Faulkton	20	20	Rapid City	29.5	29.5
Platte	22	22.5	Faith	27.5	27.5
Plankinton	23	21	Isabel	25.5	25.5
Stickney	22	22.5	Van Metre	26	24.5
Tripp	20.5	20.5	Powell	27	27
Woonsocket	19	19	Underwood	29.5	29
Arlington	16.5	16.5			

Revision of Page 818

South Dakota to Sioux City

	Prescribed	Revised		Prescribed	Revised
Yankton	11	11	Huron	14.5	15
Scotland	11	12	Redfield	16	16
Tyndall	11	12	Watertown	16	16
Sioux Falls	11	11	Faulkton	18.5	18.5
Parker	11	12	Aberdeen	17.5	17.5
Wagner	12	13	Pierre	19	19
Salem	12	12	Roscoe	18.5	18.5
Madison	12	13	Presho	18	18
Vilas	13	13	Stamford	21	21
Wentworth	13	13	Imlay	23	23
Mitchell	12	13	Rapid City	25	25
Platte	13	14	Faith	27	27
Plankinton	13.5	14	Isabel	25	25
Stickney	13	14	Van Metre	21.5	21.5
Tripp	12	13	Powell	23	24
Woonsocket	14	14	Underwood	25	26
Arlington	14	14	Bonesteel	14	14
Wolsey	15	16	Gregory	15.5	15.5
Chamberlain	15.5	15.5	Winner	16	17.5

REVISION OF PAGE 820

Washington (Big Bend district) to Seattle

	Prescribed	Revised		Prescribed	Revised
Lyons	20	20	Ephrata	16	16
Espanola	20	20	Riparia	19.5	19.5
Bluestem	19.5	20	La Crosse	19.5	19.5
Downs	18.5	18	Farrington	19	19
Odessa	18	18	Cunningham	17.5	17
Wilson Creek	17.5	17.5	Winona	21	21
Adrian	16.5	16.5	Washtucna	18	18
Cheney	19.5	19.5	Pasco	17.5	17.5
Croskey	18.5	19.5	Connell	18	17
Emden	17.5	18	Bruce	19	17
Marengo	17.5	18	West Warden	17.5	17
Malden	19.5	19.5	Nagel	17	17
Lavista	20	19.5	Lamont	21	19.5
Reverse	18	18	Amber	20.5	19.5
Ralston	18	18	Reardon	20	20
Lind	16.5	17	Davenport	19.5	20
Neppel	16.5	17	Creston	19	19
Ruff	16.5	17	Wilbur	18.5	18.5
Schoonover	17.5	18	Hanson	17.5	17.5
Marcellus	17.5	18	Coulee	17.5	17.5
Novara	15.5	17	Omans	20	20

[fol. 267] Washington (Big Bend district) to Portland

	Prescribed	Revised		Prescribed	Revised
Lyons	22.5	23	Ephrata	20.5	20.5
Espanola	23	23	Riparia	19.5	19.5
Bluestem	23	23	La Crosse	19.5	19.5
Downs	22	20.5	Farrington	18	18
Odessa	22	20.5	Cunningham	18.5	19.5
Wilson Creek	21	21	Winona	20	20
Adrian	20	20.5	Washtucna	18	18
Cheney	20	20.5	Pasco	17	17.5
Croskey	19	20.5	Connell	18	19.5
Emden	18.5	20.5	Bruce	19	19.5
Marengo	18.5	20.5	West Warden	19.5	19.5
Malden	21	20.5	Nagel	20	20
Lavista	20.5	20.5	Lamont	20.5	20.5
Revere	20	20.5	Amber	21	20.5
Ralston	19	20.5	Reardon	22.5	23
Lind	18	19.5	Davenport	23.5	23
Neppel	22.5	19.5	Creston	22.5	22.5
Ruff	22	19.5	Wilbur	22	22
Schoonover	23	20.5	Hanson	21.5	21.5
Marcellus	23.5	20.5	Coulee	21	21
Novara	21.5	19.5	Omans	23.5	23

[fol. 268] Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of April, A. D. 1931

No. 17000

Rate Structure Investigation, Part VII

Grain and Grain Products Within the Western District and for Export

This proceeding being at issue upon an order of general investigation by the commission, and upon complaints and answers on file, and upon investigation and suspension proceedings, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and the commission having, on July 1, 1930, made and filed its original report, containing its findings of fact and conclusions thereon; and having on that date entered its original order, effective upon notice to this commission and to the general public by not less than 20 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, in which the said original report was referred to and made a part thereof; and having, by appropriate subsequent orders, postponed the effective date of the original order to June 1, 1931; and the commission having further, on the date hereof, made a supplemental report on further consideration, intended to correct, modify, and supplement its original report and order, which said original report and order and the supplemental report on further consideration are hereby referred to and made a part hereof:

It is ordered, That the said original report and order, the latter as postponed in effective date, be, and they are hereby, corrected, modified, and supplemented accordingly, to become effective on June 1, 1931, upon notice to this commission and to the general public of not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

By the commission.

George B. McGinty, Secretary. (Seal.)

A true copy:

W. P. Bartel, Secretary of the Interstate Commerce Commission.

[fol. 269] EXHIBIT 3 TO COMPLAINT

Interstate Commerce Commission
Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and order of the Commission, filed and entered October 22, 1934, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases as shown in the footnote on the first page of said report, the original of which is now on file and of record in the office of this Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 11th day of December, A. D. 1939.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 270] Served December 5, 1934

20060

Interstate Commerce Commission

No. 17000

Rate Structure Investigation, Part VII

Grain and Grain Products Within the Western District and for Export

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[fol. 275] No. 17000 [1]

Rate Structure Investigation, Part VII

Grain and Grain Products Within the Western District and for Export

Submitted February 16, 1934. Decided October 22, 1934

1. Propriety of rates, regulations, and practices affecting the transportation of grain and grain products within the western district and for export further considered in a proceeding reopened as a result of the decision of the Supreme Court of the United States in Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248.

2. General financial condition of the carriers in the western district, and the general economic status of the pro-

[1] This proceeding also embraces 58 formal complaints and suspension proceedings (also subnumbers of some of the complaints) as shown in the statement of issues in appendix A of the original report.

ducers and shippers of grain in that district, reviewed, and the effect thereof in the determination of a reasonable general level of rates on grain and grain products in that district discussed.

3. Comparison made of general transportation conditions in western trunk-line, southwestern, and intermountain territories in justification of the lower general level of prescribed rates in western trunk-line territory than in the other two territories.

4. Revised rates prescribed in southwestern and intermountain territories on general levels higher than the levels prescribed in the original report, but in most instances lower than the present rates.

5. General plan of first prescribing reasonable maximum through rates from grain origins to final markets and then breaking them back into inbound local rates to intermediate markets and proportional rates beyond, representing the so-called rate-break combinations, affirmed.

6. Rule for the exclusive application of the rate-break combinations on shipments stopped in transit at the intermediate rate-break markets, and the elimination of one-factor through rates less than those combinations, and of resulting transit balances less than the proportional rates from the rate-break markets, adhered to.

7. Decision of the Supreme Court of the United States in Texas & P. Ry. Co. v. United States, 289 U. S. 627, in its bearing on the question of jurisdiction over combinations of rates through the rate-break markets and other gateways, interpreted.

8. Findings in respect of some of the inbound local rates to the rate-break markets modified.

9. General plan of the revision of proportional rates from Missouri River markets to St. Louis, Memphis and the Southwest, and to Minneapolis and Duluth, adhered to.

10. Finding as to the application of interior scales rescinded.

[fol. 276] 11. Maximum grading between key points of 0.5 cent for each 15 miles, subject to the key-point rates as minima, prescribed.

12. Limitation to two of the number of transit stops without separate charge, and the prescription of a separate charge of 2 cents per 100 pounds for each additional transit stop, adhered to.

13. Requirement of separate charge of 2 cents per 100 pounds for each stop in transit, including the first, for storage of grain products, reversed, and a stop in transit for storage of grain products treated the same as a stop in transit for merchandising and milling grain, and as one of the two stops in transit permitted without separate charge.

14. Finding as to stops in transit for inspection modified so as to warrant a separate charge for inspection only on shipments reconsigned after inspection.

15. Permission to make a minimum charge of 10 cents, in the inbound local rates to the rate-break markets, rescinded.

16. Revisions made of rate levels and relations in various parts of the western district.

17. Findings in so-called Columbia Basin Case modified.

A. B. Enoch, R. S. Outlaw, R. J. Hagman, Burton Mason, Arthur C. Spencer, B. F. Batts, J. R. Bell, E. E. Bennett, L. N. Bradshaw, C. S. Burg, D. P. Connell, M. L. Countryman, Jr., J. N. Davis, Wm. E. Davis, Gerald E. Duffy, P. F. Gault, Joseph J. Geary, C. S. Hadley, Charles A. Hart, Thomas P. Healy, L. C. Jorgensen, Alfred S. Knowlton, H. H. Larimore, Ira S. Lillick, A. H. Lossow, James E. Lyons, Walter McFarland, Frank H. Moore, G. H. Muckley, M. G. Roberts, Douglas F. Smith, Elmer A. Smith, J. M. Souby, J. L. Stewart, Robert Thompson, C. B. Ullrick, and J. C. Winfield for respondents.

F. P. Aughnay, Clyde S. Bailey, C. B. Bee, John E. Benton, Herman L. Bode, F. Chatterton, Walter Condran, Wm. P. Ellis, M. J. Foley, Arthur M. Geary, Paul F. Good, Maurice H. Greene, G. W. Hamilton, Geo. G. Hannan, Fay Harding, J. A. Heder, J. H. Henderson, Mabel Irwin, D. L. Kelley, W. D. Lane, Ben C. Larkin, C. W. McDonnell, C. H. McWhinnie, B. B. Morton, E. K. Murray, Frank Purse, Clyde M. Reed, C. A. Ross, P. O. Sathre, Edwin Vail, and S. J. Wettrick for State railroad commissions and farm organizations.

Harry C. Ames, J. F. Adams, E. R. Alton, L. E. Banta, Ernest S. Ballard, K. C. Batchelder, J. L. Bowlus, Freeman Bradford, Harrison A. Bronson, J. S. Brown, B. H. Carmichael, Herbert J. Campbell, J. S. Brown, S. J. Cole, C. S. Connolly, J. M. Cook, S. W. W. Car, F. R. Dalzell, Edward S. Depass, Dick Dixon, D. J. Donahoe, Jr., R. T. Dorsey, H. D. Driscoll, T. A. Durrant, W. H. Fitzpatrick, Frank Foltz, Emuel J. Forman, Roland W. Geary, Bernard L. Glover, Weston B. Grimes, Charles W. Hall, H. W. Hazeltine, I. M. Herndon, E. H. Hogueland, J. W. Holloway, Wm. E. Johnson, C. D. Kalenbach, F. S. Keiser, Alfred P. [fol. 277] Kelley, John A. Kuhn, A. J. Leber, Frank Leffingwell, J. A. Little, R. D. Lytle, Wm. LeBlanc, L. Lacroix, J. Geo. Mann, W. T. Macauley, R. W. Magill, C. A. Mitchell, Edgar Moulton, Wm. T. McArthur, John F. McCarthy, R. A. McClintock, William C. McCulloch, J. B. McGinnis, A. McKinley, G. F. Nicolin, F. N. Oliver, R. S. Orr, William F. Price, H. K. Relf, E. V. Rhodes, Ralph Russell, W. R. Scott, R. C. Shoemaker, D. R. Simpson, A. T. Sindel, E. B. Smith, Martin F. Smith, Y. H. Sparrow, J. W. Stannard, H. A. Thompson, E. H. Thornton, O. W. Tong, Frank B. Townsend, F. W. Turcotte, A. F. Vandegrift, C. T. Vandenover, J. R. Wait, S. J. Wettrick, W. V. Wheat, Neal E. Williams, Ray Williams, F. P. Willette, F. Gordon Willis, and G. H. Work for shippers, grain markets, and other organizations.

Report of the Commission on Further Hearing

By the COMMISSION:

In Grain and Grain Products, 164 I. C. C. 619, 173 I. C. C. 511, a general revision was required of the rates, rules, and practices affecting the transportation of grain and grain products throughout the western district and for export.[2] The revised tariffs became effective August 1, 1931, and

[2] The term "western district" as here used means the territory west of the Great Lakes and on and west of the Mississippi River (including east-bank points), Illinois, and the Upper Peninsula of Michigan. The inquiry covers rates, rules, and practices within this territory on domestic shipments, and to all United States ports of export from this territory, and from lake ports to north Atlantic ports, on export shipments.

were canceled February 20, 1932. The restored adjustment of July 31, 1931, with minor exceptions since made, is now in effect. Reference herein to the present adjustment will therefore be a reference also to the adjustment immediately preceding the canceled rates. The canceled adjustment will be referred to hereinafter as the Part 7 adjustment. Unless otherwise specified rates will be stated in cents per hundred pounds and prices of grain in cents per bushel.

The Part 7 adjustment was canceled as a result of the decision of the Supreme Court of the United States in Atchison, T. & S. F. Ry. Co. v. United States, 284 U. S. 248, requiring vacation of our order, because of our denial of petitions of the carriers for further hearing, designed to show, by bringing the record down to date from the close of the original hearings in September 1928, that general economic conditions, reflected in the nation-wide depression, had so changed as to make our order, effective August 1, 1931, unresponsive to then current conditions.

Our original order of reopening, restricted to a showing of changed conditions, was modified, upon objections of the parties, to an order of reopening without stated restrictions [fol. 278] other than the avoidance, as much as possible, of cumulative testimony. Accordingly the testimony offered upon the rehearing concerned all issues, including the effects upon the various parties of the Part 7 adjustment.

It is deemed appropriate to discuss the general question of changed economic conditions, in its effect upon both carriers and shippers, before taking up for consideration the form, level, and relations of the prescribed adjustment.

Economic Condition of Western Carriers as Shown in Original Report

In the original report the percentage rates of return of class I carriers in the western district for the calendar years 1921-28 were shown as follows: [3]

---

[3] Computed on investment of the carriers, as shown by their books, including materials and supplies, and cash as of the beginning of the year.

Period	North western region	Central-western region	South-western region	Western district
Year 1921	1.42	4.43	3.17	3.12
Year 1922	2.78	4.07	3.27	3.45
Year 1923	3.45	4.50	3.65	3.96
Year 1924	3.12	4.21	4.34	3.87
Year 1925	3.60	4.41	4.37	4.13
Year 1926	3.83	4.86	4.56	4.45
Year 1927	3.40	4.28	3.98	[1] 3.92
Year 1928	4.04	4.59	4.32	4.35

[1] Chicago & North Western 3.66, Chicago, Burlington & Quincy 4.53, Illinois Central 4.26, Atchison, Topeka & Santa Fe system 5.06, Union Pacific system 4.49, Southern Pacific Company 3.71, Chicago & Alton, the Chicago & North Western, the Chicago, St. Paul, Minneapolis & Omaha, the Chicago, Burlington & Quincy, the Chicago Great Western, the Chicago, Milwaukee, St. Paul & Pacific, the Minneapolis & St. Louis, the Minneapolis, St. Paul & Sault Ste. Marie, the Green Bay & Western, and the Quincy, Omaha & Kansas City combined (carriers with 75 percent or more of their mileage in western trunk-line territory) 2.97

It was further shown that for the years 1921-27, inclusive, the Oregon-Washington Railroad & Navigation Company earned 1.02 percent on its book value; that in 1927 the composite earnings of the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie (Soo Line) on our valuation, subsequent investment not considered, was 4.75 percent; that during the seven years after the termination of Federal control these carriers were short of a 5.75 percent return by $189,775,069 on property investment and by $136,265,151 on our valuation; that in 1927 the corresponding shortage on our valuation was $12,758,736; and that during the 10-year period 1916-26 the Great Northern and Northern Pacific added $216,144,016 to their investment, but in 1926 had a net railway operating income $3,394,410 less than for the year ended June 30, 1916, before they made this additional investment.

[fol. 279] As to the importance of the grain and grain products tonnage it was shown that grain and grain products produced the following percentages of total revenues in 1924:

Western district	12.1
Northwestern region	16.3
Central-western region	10.7
Southwestern region	8.9
Great Northern-Northern Pacific-Soo Line	20.0

The importance of grain and grain products to individual carriers was shown by the following tables:

Grain and grain products on—	Of total carload tonnage Percent	Of total carload revenues Percent
C. & N. W., 1911-15	13.3	19.6
C. & N. W., 1922-26	10.9	12.6
C., M., St. P. & P., 1916	18.5	22.1
C., M., St. P. & P., 1926	10.2	11.5
C., B. & Q., 1916	17.21	18.05
C., B. & Q., 1926	13.13	12.47

Percentage of grain and grain products	Of total tonnage originated
	Percent
C. & N. W. in South Dakota:	
Year 1923	59.3
Year 1926	25.1
C., M., St. P. & P. in 1926:	
South Dakota	35
North Dakota	36
Minnesota	43
Iowa	27
Percentage of agricultural products (including livestock)	
C. & N. W. in 1923:	
South Dakota	86.4
Nebraska	77.7
C. & N. W. in 1926:	
South Dakota	75.5
Nebraska	74.0
Minnesota	78.4
Wisconsin	7.8
Illinois	8.7
C., M., St. P. & P. in 1926:	
South Dakota	74.9
North Dakota	61.4
Minnesota	60.3
Iowa	49.3

Class I carriers of western district, 1927	Tons originated	Tons carried
Grain and grain products percentage of total traffic	11.60	10.12
Grain products percentage of total grain and grain products	24.74	26.92

[fol. 280] Carriers' Contentions Upon Reopened Record

The general contentions of the carriers upon the reopened record are that the effect of the Part 7 revision, which they state reduced their annual aggregate revenues some $20,000,000, was to aggravate their already serious financial condition; that their aggregate revenues have been greatly reduced not only by failure of general traffic incident to the present period of economic depression, but also by increasing diversion of traffic from the rails to trucks and other competing forms of transportation, and by reductions in rates necessary to prevent further such diversions; and that the general level of rates on traffic remain-

ing to the rails should be high enough to yield a reasonable rate of return on their investment, and afford them some leeway to meet the challenge of these competing forms of transportation, as specific instances may seem to demand. More detailed presentations are made on behalf, respectively, of the carriers in the western district as a whole, the southwestern lines, the western trunk lines, the northern lines, and the so-called Mountain-Pacific southwestern lines, and these will be discussed separately in that order.

Western-district carriers

The downward trend of the carriers' rate of return in 1930, as depicted in their petitions for rehearing, filed in September 1930 and in February 1931, became increasingly worse not long after the latter month, and continued throughout 1931 and 1932, with the situation during the first quarter of 1933 the worst in many decades. During the two and one half years beginning January 1, 1931, their revenues would have been insufficient to meet operating expenses if maintenance had not been deferred.

The percentage rates of return of class I carriers in the western district, including switching and terminal companies, for the years 1921 to 1932 were as follows:

Period	Investment Percent	I. C. C. primary value [1] Percent	1920 rate-case value [2] Percent
Year 1921	3.23	3.91	3.44
Year 1922	3.67	4.44	3.91
Year 1923	4.08	4.90	4.33
Year 1924	4.02	4.81	4.27
Year 1925	4.33	5.15	4.58
Year 1926	4.66	5.53	4.93
Year 1927	4.13	4.88	4.36
Year 1928	4.62	5.45	4.88
Year 1929	4.79	5.63	5.06
Year 1930	3.36	3.95	3.55
Year 1931	2.12	2.45	2.24
Year 1932	[3] .86	[3] 1.00	[3] .91

[1] Computed on basis of values as found by the Commission for individual carriers having valuation dates ranging from June 30, 1914, to December 31, 1920, adjusted to later dates by adding net increases in investment in road and equipment, less accrued depreciation, plus an allowance for working capital.

[2] Based on values of western carriers as found by the Commission in Increased Rates 1920, 58 I. C. C. 220, adjusted to later dates as explained in footnote 3.

[3] Based on 1931 values.

[fol. 281] On the basis of our primary value, which was the lowest of the three valuations shown, net railway operating income was only 2.45 per cent in 1931 and 1 per cent in 1932.

The net income after fixed charges was $212,417,917 in 1930 and $74,961,777 in 1931. The deficit in meeting fixed charges was $98,327,638 in 1932, $79,557,696 during the first six months of 1932, and $78,144,366 during the first six months of 1933.

The net railway operating income of the western-district carriers of $215,071,035 in 1931 was equivalent to a 5 per cent return on $4,301,420,700, less than half of the property value as measured by our primary values. The net railway operating income of those carriers of $87,809,808 for 1932 was equivalent to a 5 per cent return on $1,756,196,160, or only one fifth of the property value as measured by our 1931 primary values. It is argued that both a 5 per cent return and our primary values are too low, but that, measured even by that rate base, the carriers would have earned less than 5 per cent in 1931 if half of their properties were viewed as obsolete, and approximately 5 per cent upon one fifth of their property value in 1932 if four fifths of their properties were viewed as obsolete.

In 1931 the following 26 class I carriers, or systems, failed by $50,659,202 to meet fixed charges: Chicago & Alton; Burlington-Rock Island; Chicago & North Western (and Chicago, St. Paul, Minneapolis & Omaha); Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific (and Chicago, Rock Island & Gulf); Denver & Rio Grande Western; Duluth, South Shore & Atlantic; Fort Smith & Western; International-Great Northern; Louisiana, Arkansas & Texas; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Missouri & North Arkansas; Missouri-Kansas-Texas (and Missouri-Kansas-Texas of Texas); Nevada Northern; Northwestern Pacific; Oklahome City-Ada-Atoka; St. Louis-San Francisco; St. Louis Southwestern (and St. Louis Southwestern of Texas); San Diego & Arizona; Spokane International; Spokane, Portland & Seattle; Texas Mexican; Utah Railway; Western Pacific; Wichita Falls & Southern.

In 1932 of the 46 class I railways or systems in the western district, only the following 10 earned fixed charges: Atchison, Topeka & Santa Fe; Chicago, Burlington & Quincy; Union Pacific; Denver & Salt Lake; Green Bay & Western; Kansas, Oklahoma & Gulf; Louisiana & Arkansas; Midland Valley; Texas & Pacific; Toledo, Peoria & Western. The remaining 36 carriers lacked $128,181,416

of meeting fixed charges, including the following that handle grain and its products in substantial volume: Chicago & North Western (and Chicago, St. Paul, Minneapolis & Omaha); Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific (and Chicago, Rock Island & Gulf); [fol. 282] Great Northern; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Missouri-Kansas-Texas (and Missouri-Kansas-Texas of Texas); Missouri Pacific; Northern Pacific; St. Louis-San Francisco; Southern Pacific (and Texas & New Orleans).

Following is a list of grain-carrying roads whose applications for loans from the Reconstruction Finance Corporation have been approved by us: Chicago & North Western; Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific; Great Northern; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Missouri Pacific; St. Louis-San Francisco; Southern Pacific; Alton; Chicago Great Western; Denver & Rio Grande Western; Fort Smith & Western; Missouri & North Arkansas; St. Louis Southwestern; Texas & Pacific; Western Pacific; Wichita Falls & Southern. The applications approved aggregated $166,585,383. In addition 12 of the above carriers received $12,592,364 of a total of approximately $74,000,000 allotted by the Railroad Credit Corporation to all western carriers.

Since 1930 there has been a progressive decline in maintenance, as shown by maintenance expenditures by western carriers:

Period	Ways and structures	Equipment
Year 1928	$346,197,151	$415,911,137
Year 1925-29 (5-year average)	337,018,663	426,329,956
Year 1930	282,873,300	363,904,183
Year 1931 [1]	205,215,409	291,570,792
Year 1932 [1]	142,468,493	225,298,890

[1] Decrease under 5-year average was 34.92 per cent in 1931 and 51.82 per cent in 1932.

At 1932 labor and material costs deferred maintenance amounted to $143,997,411 in 1931 and $152,217,427 in 1932, for the two years aggregating within about $6,500,000 of the total net railway operating income for those years. During these two years the actual operating expenses were greater, and the actual net railway operating income was less, than shown in the accounts, because in many instances items ordinarily chargeable to operating expense were not included.

In carloads of revenue freight handled there was a progressive decline from 1929 to 1932, and a progressive decline in 1930, 1931, and 1932 from the average of the 5 year period 1925-29:

Average, 1925-29	18,940,905
Year 1929	19,395,192
Year 1930	16,936,803
Year 1931	13,619,810
Year 1932	10,266,947

[fol. 283] Carloads of revenue freight during the first week in January 1933 were 74 per cent of those in the corresponding period in 1932, and during each week from January 1 to August 20, 1933, were less than in the corresponding period in 1932.

Tons of revenue freight originated by western carriers in 1932 were only 42.6 per cent of those originated in 1929, and 44.7 per cent of the 5-year average 1925-29, inclusive, in 1930 less than in any year following 1922, and in 1932 approximately half of those originated in 1930.

The tons of less-than-carload traffic originated were less in 1929 than in any previous year, and approximately 61.5 per cent of tons originated in 1916. The 4,309,057 tons originated in 1932 represented only 38.6 per cent of the 11,165,307 tons originated in 1929.

Since the close of the original record the percentage of grain and grain products of all traffic has substantially increased in respect both of tons originated and of tons carried:

Period	Tons originated	Tons carried
Year 1927	11.60	10.12
Year 1928	13.16	11.34
Year 1931	15.51	13.23
Year 1932	17.46	14.13

The average number of employees was reduced from 646,790 in 1926 to 373,376 in 1932, to 333,556 in January 1933, and to 331,918 in February 1933; for the first six months of 1933 to a little over half the average for any year from 1926 to 1929. Although the number of employees sharply decreased, the aggregate wages substantially increased, having risen from $457,104,000 for 631,104 employees in 1911, to $563,139,000 for 373,376 employees in 1932.

The ratio of gross to revenue ton-miles has increased in

the last few years, largely because of an increase in the volume of shipments example, the number of shipments requiring tank and refrigerator cars, involving empty-car movement of almost 100 per cent. For example, the number of shipments requiring tank and refrigerator-car equipment increased 83.30 per cent in 1929 over 1921, and 86.07 per cent in 1930 over 1921, compared with corresponding increases of 27.42 and 5.20 per cent, respectively, in the number of shipments in other types of equipment. The effect of this upon the cost of handling traffic is shown in the table below:

[fol. 284]

Year	(1)	(2)	(3) Tons	(4) Cents	(5) Cents	(6) Mills	(7) Mills	(8) Per cent
1924.....	136,025,388	367,538,650	22.96	1.209	0.967	4.474	3.578	2.7020
1928.....	157,439,820	441,599,908	22.79	1.166	.856	4.156	3.051	2.8049
1929.....	160,738,301	451,779,717	23.00	1.162	.846	4.134	3.011	2.8107
1930.....	139,129,630	402,312,643	22.69	1.149	.849	3.973	2.935	2.8916
1931.....	111,043,957	332,394,498	21.84	1.136	.861	3.795	2.878	2.9934
1932.....	81,099,139	258,605,140	20.46	1.143	.915	3.584	2.871	3.1888

[1] Revenues tons 1 mile, thousands.
[2] Gross ton-miles, in thousands.
[3] Average load.
[4] Revenue per revenue ton-mile.
[5] Expense per revenue ton-mile.
[6] Revenue per gross ton-mile.
[7] Expense per gross ton-mile.
[8] Ratio gross ton-miles to revenue ton-miles.

Increases since 1929 in percentage of expense per revenue ton-mile, computed from the above table, are shown below:

	Per Cent
Year 1929	72.81
Year 1930	73.89
Year 1931	75.79
Year 1932	80.05

The foregoing figures do not reflect what the situation would have been under normal maintenance. Including the deferred maintenance properly chargeable to freight the figures would be as follows:

	1931 actual	1931 deferred maintenance included	1932 actual	1932 deferred maintenance included
	Cents	Cents	Cents	Cents
Expense per revenue ton-mile.....	0.861	0.957	0.915	1.053
Expense per gross ton-mile.....	.2878	.3197	.2871	.3303

On the basis of normal maintenance the expense per gross ton-mile was greater in 1932 than in any year following 1925; and the expense per revenue ton-mile greater in 1932

than in any year following 1922. The ratio of gross ton-miles to revenue ton-miles increased each year from 2.7583 in 1926 to 3.1888 in 1932.

The ratio of revenues was relatively less on grain and more on all other commodities in 1931 than in 1924, a situation that was intensified in 1932 compared with 1924:

	1924 (59 roads)		Ratio to 1924					
	Tons carried	Revenue	Tons carried, 1928	Revenue, 1928	Tons carried, 1931	Revenue, 1931	Tons carried, 1932	Revenue, 1932
Total grain and grain products..	73,995,937	$194,665,366	104.03	105.82	84.08	76.33	61.98	53.16
Total all other traffic....	506,445,168	1,231,582,780	118.79	119.45	80.53	83.05	55.03	61.97

[fol. 285] The tons and revenues for 1924 are based upon the statistics of 59 carriers; for other years on statistics of all western-district class I carriers.

In 1931 and 1932 the average revenue per ton carried compared with 1924 was considerably less on grain and grain products than on other carload traffic and on total carload traffic:

Period	Grain and grain products Per cent	All other carload traffic Per cent	Total car-load traffic Per cent
Year 1924	100	100	100
Year 1928	102	101	100
Year 1931	91	103	101
Year 1932	86	113	109

The ratio of revenue to volume carried on grain and grain products decreased as follows:

	Year	Per cent
Grain and grain products traffic percentage of all carload traffic	1928	12.26
Do	1931	13.81
Do	1932	14.80
Grain and grain products revenue percentage of total carload revenues	1928	12.28
Do	1931	12.68
Do	1932	11.94

The relation of hauls and earnings on grain and grain products and all other carload traffic is reflected in the following table:

Period	Grain and grain products			All other carload traffic		
	Average haul Miles	Ton-mile revenue Cents	Car-mile revenue Cents	Average haul Miles	Ton-mile revenue Cents	Car-mile revenue Cents
Year 1924 [1]	284.88	0.934	31.99	246.14	1.037	30.39
Year 1926 [2]	259.16	0.906	28.90	205.53	1.122	32.17

[1] From special reports of 59 carriers.
[2] Based on commodity statistics of 26 class I carriers in the western district that currently kept such statistics.

It is questionable whether these figures for 1924 and 1926 reflect present relations, in view of the contention of the carriers that the trucks have taken the greater part of their short-haul traffic on other commodities but not on grain, which continues to move in substantially normal volume by rail.

The cost of transit in the southwestern region has been increasing as shown by ratios of grain products to grain originated of 67.07 per cent in 1928, 85.7 per cent in 1931, [fol. 286] and 94.53 per cent in 1932. Four terminal services instead of two are required on a shipment of grain stopped in transit, and more than four are required when grain is milled into products, because of the additional cars required for the lighter loading of products out of the transit point, demonstrated by an average loading of some 80,000 pounds on wheat and 40,000 pounds on flour.

Grain and grain products, the carriers contend, are not contributing their fair share of aggregate revenues, considering relative services incident to the transportation of the respective classes of traffic. Among the relative disadvantages alleged by the carriers in the handling of grain and grain products compared with other traffic, in addition to the vastly greater extent of transit, are the requirement of a better type of box car, the furnishing of grain doors, extra terminal expense, seasonal movement, the assembling, for weeks and months in advance, of cars necessary for the peak movement over a short period following harvest (a situation aggravated in recent years by the increasing use of the combine), and greater empty-car movement generally.

The carriers have experienced increasingly reduced revenues not only from a reduced volume of rail traffic due to general conditions but also because of the diversion of a large part of the remaining traffic from the rails to competing carriers over water, truck, bus, and pipe-line routes, and because, further, of the increasing delivery of pur-

chased motor vehicles under thei own power and the increasing substitution for fuel of natural gas for coal.

Intercoastal Panama Canal traffic and barge-line traffic have increased as follows:

Period	Through Panama Canal [1]	On Mississippi River [2]	Mississippi River Barge Line	American Barge Line
Year 1920	13.3	.....	.....	.....
Year 1924	....	70,792	.....	.....
Year 1925	40.6	.....	.....	.....
Year 1928	....	119,630	.....	.....
Year 1929	....	107,647	.....	.....
Year 1930	34.9	.....	19,134	602,296
Year 1931	....	.....	276,172	589,146
Year 1932	33.4	107,876	509,196	.....

[1] Percentage of total intercoastal traffic through Panama Canal.
[2] Tons shipped in Government barges on Mississippi River.

In recent years the loss of revenue freight from delivery of automobiles and trucks under their own power, and from voluntary reductions designed to retain this traffic to the rails, has been very great. In 1931 the revenue loss of the Missouri Pacific from rate reductions to meet highway competition was $11,624,000, based on reduced car earnings since 1928. In 1931 a voluntary reduction from $1.25 to [fol. 287] $1.10 by the Missouri Pacific failed to regain for that carrier its automobile traffic from St. Louis to Memphis, which had decreased from 497 cars in 1930 to 73 cars in 1931. During the reopened hearings the carriers from St. Louis to Memphis were contemplating a reduction from $1.10 to 50 cents in the rate on automobiles between those points, which would have affected the through rates from St. Louis to an extensive destination area in Missouri, Arkansas, Louisiana, Mississippi, and Tennessee, to which the combination of the new rate to Memphis with the rate beyond would have been lower than the published through rates from St. Louis.

The truck movement of cotton to Memphis increased from 339,564 bales in 1930-31 to 871,376 bales in 1931-32. Practically all of this inbound truck cotton moved out of Memphis by boat and barge to New Orleans. The total cotton movement from Memphis by water increased 351,415 bales in 1931-32 over the previous season, or more than five times the previous season's water movement from Memphis. From August 1, 1931, to March 31, 1932, 61 per cent of all cotton shipments to New Orleans was by water. From August 1931 to April 16, 1932, the cotton receipts at Lake

Charles, La., were 18,774 bales by rail and 107,998 bales by water.

The truck movement of cotton received at Texas ports increased from 6.9 per cent in 1928-29 to 23.29 per cent in 1930-31, and to 32.39 per cent in 1931-32. In an effort to regain the cotton traffic to the rails the rates on cotton to New Orleans and Gulf ports west of New Orleans have been reduced about 35 per cent from southwestern origins for distances of approximately 350 miles, and at least 20 per cent for distances in excess of 600 miles. As a result of marked reductions in rail rates effective October 17, 1931, the percentage of truck cotton to Houston was reduced from 65.4 to 33.9. In 1931-32 the estimated loss of revenue on cotton to all Louisiana and Texas ports, and on shipments to Memphis from Oklahoma, Texas, Louisiana, Arkansas, and southeastern Missouri resulting from truck and barge competition was $12,436,738.

In Texas the diversion of cottonseed traffic from the rails to highway transportation increased from 16.83 per cent in 1930 to 35 per cent (about 1,054 cars) in 1931. In 1931 the loss to the southwestern carriers on cottonseed and cottonseed meal and cake, due to truck competition and rate reductions to meet truck competition, was approximately $1,500,000.

In 1931 the loss of revenue to the rail carriers resulting from the diversion to the truck lines of 34,081 cars of cattle, 12,409 cars of calves, 50,849 cars of hogs, and 5,418 cars of sheep to East St. Louis, Kansas City, St. Joseph, Wichita, Oklahoma City, and Fort Worth, based on average [fol. 288] per car earnings of the Missouri Pacific, amounted to $4,767,000.

Truck transportation of coal to St. Louis alone costs the railroads annual revenues of $630,000. The revenue loss on coal to the southwestern carriers, resulting from the use of pipe-line natural gas for fuel, and based on an average coal rate of $1.50 a ton, is estimated at $2,877,150.

By reason of truck competition the relation of less-than-carload traffic to carload traffic is fast changing. During the years 1921-31, inclusive, the average haul per ton on carload traffic increased only 4.4 miles, compared with an increase in average haul per ton on less-than-carload traffic from 195.21 miles to a maximum of 316.16 miles. Between large distributing centers, such as from St. Louis to Kansas City and Memphis, the overnight truck has taken practically

all of a former lucrative business from the rail carriers. In recent years the trucks have handled more than 80 per-cent of the less-than-carload freight from St. Louis to Kansas City. Low rail commodity rates have been or are being established from St. Louis to Kansas City, Omaha, and quite generally from western trunk-line territory to the Southwest, and within the Southwest. An experimental free pick-up and delivery service of southwestern lines for shipments within a radius of 300 miles has not as yet proved its value for general application. In western trunk-line territory the pick-up and delivery service accorded by some of the rail lines has not prevented the trucks from handling practically all of the merchandise traffic for distances of from 100 to 200 miles.

In recent years refined oil, as well as crude oil, has been transported by pipe line, with revenue losses to the rail carriers resulting both from the diversion of traffic from the rails and from reduced rates required on shipments retained to the rails. In 1931 eight of the principal refineries in the inland group of Arkansas, Kansas, southern Missouri, Oklahoma, Texas, and Louisiana began transporting refined oil by pipe line. In that year the refineries in the States mentioned shipped 14,735,000 barrels of a total production of 189,000,000 barrels of refined oil through pipe lines, with a revenue loss to the rail carriers, on basis of 10,000 gallons per car and the average per car revenue of the Missouri Pacific for 1931, of $4,689,000. About 50 per cent of the refined oil produced by the eight refineries mentioned has been diverted from the rails to the pipe lines. In 1930 the mileage of the pipe-line companies was 51,500. The revenues of these companies, based on a charge of 25 cents a barrel (approximately 8 cents per hundred pounds) amounted to $202,341,000. Prior to pipe-line competition the International-Great Northern, for example, during the [fol. 289] six months March to August 1931 handled 77,745 cars of crude oil, at an average revenue of $74 per car and a total revenue of $5,753,130. In March 1932 it handled only 17 cars from the same fields. The pipe line from Wickett, Tex., to Whiting, Ind., now transports 58 cars of oil daily that formerly gave the rail carriers $1,530,000 annually. In addition to the loss of $2,200,000 in annual revenues from the pipe-line transportation of crude oil prior to the close of the original record herein, the carriers charge a loss of $4,500,000 to pipe-line transportation of refined oil, as a

result of changed conditions since the close of that record.

The southwestern carriers estimate revenue losses resulting from the competition of trucks, Mississippi River, and intercoastal water lines (including rate reductions necessary to regain or retain traffic to the rails), and private automobiles and busses at from $75,000,000 to $100,000,000 annually.

Since the close of the original record the western trunk-line carriers, in order to meet truck and water competition, have had to reduce their rates on dairy products from Minnesota, Wisconsin, and Iowa to Chicago, on canned goods from western origins to eastern destinations, on cereal beverages from Wisconsin to the East, on sand and gravel between various localities, and on furniture, petroleum, and livestock throughout all or a part of the western district, below maximum levels prescribed or approved in proceedings before us. By one of these reductions 6,000 carloads of canned goods, with a revenue of $2,500,000, were saved from motor-ship transportation to the rail lines.

In western trunk-line territory the volume of less-than-carload freight fell from 2,315,000 tons in 1911 to 1,300,000 tons in 1931. In 1931 the revenue loss of the Chicago & North Western, from diversion to the trucks, principally of less-than-carload traffic, was $11,230,000. In addition to water competition, 400 trucks operate daily between Milwaukee and Chicago. Trucks also operate freely between the Missouri River and Iowa cities and Chicago.

In General Rate Level Investigation, 1933, 195 I. C. C. 5, 11, it was stated that reductions in rail rates to meet motor and water competition increased after the middle of 1932, and though greater on, were by no means confined to, less-than-carload shipments, substantial reductions having also been required on carload shipments of fruits, vegetables, livestock, canned goods, cottonseed, cotton, sugar, furniture, soap, wool, coffee, packing-house products, automobiles, and beverages.

The western-district carriers contend that a change in rate level primarily affects the consumer rather than the producer, because the grain market is a consumer's [fol. 290] market, and that the effect of a rate reduction, say of 10 per cent, amounting to 3.1 cents a bushel, when applied to a 35-cent wheat rate is small when compared with a resulting aggregate reduction of approximately

$20,000,000 in the carrier's revenues, and when compared also with the wide fluctuations in market price, illustrated by increases in wheat prices, in 1933, of 10 cents in April over March, 14 cents in May over April, 28 cents in July over May, and 54.6 cents in July over February. The contention further is that the effect of the rate upon the price to the consumer or producer should not be a controlling consideration if the rate meets the statutory standards of reasonableness.

The western-district carriers urge that the general level of rates on grain and grain products compares favorably with the general level of the rates on other traffic and with pre-war rates. They refer to Rates and Charges on Grain and Grain Products, 91 I. C. C. 105, decided July 10, 1924, in which reference was made to Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, and Reduced Rates, 1922, 68 I. C. C. 676, and it was found that rates on grain, grain products, and hay were on a lower basis compared with pre-war rates than were the carload rates on other traffic, and that the earnings per car, per car-mile, and per ton-mile on grain and grain products did not indicate a contribution of more than a fair share of the carriers' revenues by grain and grain products in the group then under consideration, taking into account the value of the traffic, average hauls, relative services, and the ratio of grain and grain-products revenues to total revenues, compared with former years. They say that in Kansas Public Utilities Comm. v. Atchison, T. & S. F. Ry. Co., decided with the first-cited case, it was found that the general basis of rates on grain, grain products, and hay within the western group had not been shown to be unreasonable, unduly prejudicial, or otherwise in violation of the Interstate Commerce Act.

The Southwestern Lines

The separate presentation of the southwestern lines is directed mainly to the relation of rate levels in the Southwest and other parts of the western district, and will be discussed later. As to their financial status these carriers rely principally upon the showing reflected in the general presentation of the carriers in the western district as a whole.

The Northern Lines

Financially, the so-called northern lines [4] claim to be worse off than the carriers in the western district as a whole. [fol. 291] They own or operate about 23 per cent (31,362 miles) of the total mileage of class I railroads in the western district, valued in excess of 2 billion dollars, on our valuation. At the time of submission of the original proceeding, in 1929, they were earning on that valuation 1 or 2 per cent less than the 5.75 per cent which they claimed to be entitled to as a reasonable return. Since then their financial condition has become worse, and in 1932 they were more than $50,000,000 short of earning their fixed charges. With some improvement since 1932 their condition is still serious, as shown by the following percentages of return on our valuation, plus additions and betterments since valuation date:

	1929 Per cent	1930 Per cent	1931 Per cent	1932 Per cent	1933 [1] Per cent
C., M., St. P. & P.	3.76	2.22	1.13	(2)	1.06
G. N.	5.73	3.85	2.19	0.22	1.43
N. P.	4.07	2.68	1.26	.37	.71
M., St. P. & S. S. M.	4.39	1.98	.06	(2)	(2)
S., P. & S.	3.49	1.75	1.41	.36	.68
Average return	4.44	2.75	1.37	.06	.97
Western district	5.63	3.95	2.45	1.00	....

[1] 12 months ending July 31, 1933. [2] Deficit.

A return of about 2.5 per cent on investment is required to pay the fixed charges of these carriers. During 1932 on a sustained volume of traffic an increase of about 25 per cent in rates would have been required to return fixed charges. From 1929 to 1933 these carriers failed by the following amounts to make a 5.75-per cent return on our valuation, plus additions and betterments:

Year 1929	$26,940,338
Year 1930	62,471,516
Year 1931	92,615,938
Year 1932	120,609,085
Year 1933 (12 mos. ending July 31, 1933)	101,496,546

For the four years 1929-32 these five carriers sustained 34.5 per cent of the shortage in the 5.75-per cent return of

[4] Northern Pacific, Great Northern, Soo Line, Chicago, Milwaukee, St. Paul & Pacific, and Spokane, Portland & Seattle.

the carriers as a whole in the western district. The number of times these carriers as a group earned their fixed charges is shown below:

Period	Times	Deficit
Year 1929	1.83	.....
Year 1930	1.37	.....
Year 1931	.87	$9,056,331
Year 1932	.26	47,813,640
Year 1933	.50	.....

[fol.292] The $47,813,640 deficit shown for 1932 was 48.6 per cent of the total shortage of $98,327,638 in 1932 of all class I railroads in the western district. The percentage would have been greater if the figures for the Wisconsin Central, operated by the Soo Line, had been included. In addition to their failure during the past three years to earn fixed charges these carriers are confronted with the following maturities:

	Bonds	Equipment-trust obligations	Total
1934-36	$122,192,438	$19,791,325	$141,983,763
1937-41	126,286,939	17,466,049	143,752,988

They are also indebted to the Reconstruction Finance Corporation and the Railroad Credit Corporation in substantial amounts.

Western Trunk-Line Carriers

In their presentation these carriers divide themselves into three groups. Group 1 embraces carriers [5] having 75 per cent or more of their mileage in western trunk-line territory; group 2 carriers [6] with less than 75 per cent but more than 50 per cent of their mileage in that territory; and group 3 carriers [7] with less than 50 per cent and more than 25 per cent of their mileage therein. Five of the 10

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[5] Alton; Chicago & North Western; Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Milwaukee, St. Paul & Pacific; Green Bay & Western; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Toledo, Peoria & Western; Union Pacific.

[6] Chicago, Rock Island & Pacific; Great Northern; Missouri Pacific.

[7] Atchison, Topeka & Santa Fe system; Missouri-Kansas-Texas; Northern Pacific.

group 1 carriers, two of the group 2 carriers, and none of the group 3 carriers have received loans from the Reconstruction Finance Corporation:

	Disbursed	Repaid	Balance
Group 1:			
Alton	$2,500,000	.....	$2,500,000
C. & N. W.	30,532,133	$2,393,000	28,139,133
C. G. W.	1,289,000	.....	1,289,000
C., M., St. P. & P.	8,000,000	.....	8,000,000
M., St. P. & S. S. M.	6,843,182	366,039	6,477,043
Total	49,164,215	2,759,039	46,405,176
Group 2:			
C., R. I. & P.	13,718,700	.....	13,718,700
M. P.	23,134,800	.....	23,134,800
Total	36,853,500	.....	36,853,500

Additional loans were made to certain of the carriers after the preparation of the above table.

[fol. 293] Net incomes after fixed charges declined as follows in these three groups:

Period	Group 1 [1]	Group 2 [1]	Group 3
Year 1929	$114,196,080	$51,893,635	$91,812,139
Year 1930	65,669,327	32,450,588	58,134,301
Year 1931	14,481,079	5,335,116	26,667,696
Year 1931	*26,992,748*	*53,623,100*	5,010,896
Net decline	141,188,828	85,516,735	86,801,243

[1] Deficit in italic.

For typical carriers a comparison of net income after fixed charges in 1929 and 1932 is as follows:

	1929	1932 [1]
C. B. & Q.	$35,625,969	$882,923
C., M., St. P. & P.	7,074,014	*23,269,678*
C. & N. W.–C., St. P., M. & O.	15,875,692	*14,081,054*
C. R. I. & P.	14,007,321	*9,956,800*
G. N.	25,668,551	*13,405,439*
N. P.	21,808,309	*1,991,407*
A., T. & S. F.	64,537,503	7,545,008
M. P.	12,217,763	*10,280,861*
U. P.	53,852,400	20,859,569

[1] Deficit in italic.

Mountain-Pacific Southwestern Carriers

The term Mountain-Pacific Southwest as here used embraces California, Nevada, Arizona, Oregon south of Portland, Utah on the Western Pacific, Southern Pacific, and Los Angeles & Salt Lake west and southwest of Salt Lake City and Ogden, and New Mexico west of Albuquerque, Belen, and El Paso, Tex.

The principal carriers serving the Mountain-Pacific Southwest, as thus defined, are the Southern Pacific (Pacific lines); Western Pacific; Santa Fe system (Coast lines), Los Angeles & Salt Lake; also various affiliated and subsidiary lines and independent short lines, including the Nevada Northern, Northwestern Pacific, San Diego & Arizona, Sacramento Northern, and Oregon Electric. The lines of the Denver & Rio Grande Western, the Spokane, Portland & Seattle, and the Great Northern extend into the Mountain-Pacific Southwest, but the principal parts of their lines are not so included. The presentation does not cover the local rates of the Oregon-Washington Railroad & Navigation Company, which also operates a short mileage in that territory.

The rate of return was less favorable in the Mountain-Pacific region than in other parts of the western distri t. [fol. 294] In 1931, 12 carriers operating substantially all of their mileage in the Mountain-Pacific region failed by $97,000,000 to earn 5.75 per cent on their property investment, compared with the failure of 11 western trunk-line carriers operating substantially all of their mileage in that territory to earn that return by $78,000,000. The Mountain-Pacific carriers would have required 48 per cent, and the western trunk-line carriers 32 per cent, more revenue to make the return mentioned, assuming no increase in passenger revenue or operating expense.

The return on book investment in road and equipment of the Southern Pacific (Pacific lines) declined from 5.41 per cent in 1923 to 0.63 per cent in 1932. Net railway operating income declined from an average of $4,743 per mile of road in 1921 to $2,157 per mile of road in 1931. Apprehending criticism of the latter comparison because of the use as a base of the year 1921, when rates were at their peak before the reduction in 1922, the carriers, in a similar study, using 1923 as a base, show a decline in return on investment from 5.41 per cent in 1923 to 0.63 per cent in 1932. Net railway operating income declined from $6,456 per mile of road in 1923 to $855 per mile of road in 1932, or 86.76 per cent. The decline was greatest on less-than-carload freight and on carload freight other than perishable agricultural products, the revenue per mile of road in 1932 having been only 27 per cent of that of 1923 on less-than-carload freight, and only 35 per cent of that of 1923 on carload freight other than perishable agricultural products. These declines were

due not alone to business depression, and despite an increase in population on the line of the Southern Pacific of approximately 5 per cent a year. During a given period ending in 1930 the traffic density on this line increased 2.7 per cent a year, compared with a reduction in freight revenues of about 1 per cent a year. This situation was due largely to the diversion of the more profitable traffic, such as less-than-carload freight and nonperishable traffic, to other agencies of transportation, as well as to substantial reductions in rates by the rail carriers to meet that competition.

The showing for the Southern Pacific, which extends from Portland via San Francisco, Los Angeles, and El Paso to Tucumcari, N. Mex., and from Ogden to San Francisco, is said to be typical of conditions on other lines in the Mountain-Pacific region, especially the Mountain-Pacfic Southwest.

Certain of the carriers operating wholly within the Mountain-Pacific region (and with the exception of the Oregon Short Line, Oregon-Washington Railroad & Navigation Company, Spokane, Portland & Seattle, and Denver & Rio [fol. 295] Grande Western wholly within Mountain-Pacific Southwest) show a rate of return on book investment of 3.5 per cent in 1929 and 1.3 per cent in 1931, and a decline in combined net railway operating income from $9,500,000 during the first two months of 1929 to a net deficit of more than $500,000 during the first two months of 1932.

In 1931 the all-rail westbound movement of transcontinental freight was only 71 per cent of that in 1921, and the corresponding percentage of movement via the Panama Canal route was 214. Eastbound, the corresponding percentages were 79 for the all-rail traffic and 298 for the Canal.

Typical of the diversion of traffic from the rail lines to other agencies of transportation was the diversion from the Southern Pacific to competing highway carriers during the 12 months ending March 1, 1931, of perishable and nonperishable commodities, in carloads and less than carloads, subject to actual check, of more than 6,000,000 tons, with a revenue loss of approximately $17,000,000.

Substantial revenue losses, in addition to those resulting from actual traffic diversion, resulted from reductions in rates necessary to hold the traffic to the rail lines. Typical of these reductions necessary to meet truck competition were reductions from points in the San Joaquin Valley, and on the coast division of the Southern Pacific, to destina-

tions on and adjacent to San Francisco Bay and to Los Angeles, and from points in the Sacramento Valley to destinations on San Francisco Bay, ranging from 4.5 to 6.5 cents in rates ranging from about 17 cents to 21 cents.

The coastwise water competition along the Pacific coast has practically excluded the rail lines from participation in grain traffic between north Pacific coast and California ports, even though fourth-section relief has been given the rail lines because of this competition. For example, from Portland to San Francisco the minimum rail rate under the fourth-section finding is 28.5 cents. The water lines quote carload rates on grain and flour between the same ports of 15 cents, and cargo rates even lower.

The Mountain-Pacific carriers urge that the reductions in revenues resulting from their voluntary reductions in rates to meet water and highway competition are already serious; that a further reduction, advocated by some shippers, to the basis of the water and highway rates on all traffic, to conform to the so-called value of the service to the shipper, is not warranted; and that if the rail carriers are to continue to provide adequate service they must be given the benefit, on such traffic as will continue to move by rail, of the highest possible level of rates that will permit of the free movement of traffic.

[fol. 296] A further contention of the carriers in the Mountain-Pacific Southwest is that the entire Mountain-Pacific territory, and particularly the Mountain-Pacific Southwest, should be considered for rate-level purposes as one general territory, and not be divided into Pacific-coast territory and intermountain territory, with different rate levels, as was done in the original decision.[8]

Economic Condition of the Grain Growers

Upon the reopened record, the effect of changed economic conditions upon the growers and shippers of grain was also extensively considered. It was shown that, since the close of the original hearings, the condition of the grain farmer has been in a progressive state of decline. During part of

[8] In the original decision a lower basis of key-point rates and a lower interior scale was prescribed for application in Pacific Coast territory than in intermountain territory, east thereof.

1929 thence through the spring of 1933 the prices of grain declined to a level not reached in many decades. Since the summer of 1933, and up to the present time, prices have materially improved, but are still below those of the pre-war period.

Gross farm income from all grains has decreased as follows:

Year 1924	$1,755,000,000	Year 1929	1,281,000,000
Year 1925	1,496,000,000	Year 1930	760,000,000
Year 1926	1,432,000,000	Year 1931	474,000,000
Year 1927	1,592,000,000	Year 1932	322,000,000
Year 1928	1,513,000,000		

Of the pre-war price the price of all grains averaged about 50 per cent in May, 1932, 36 per cent in March, 1933, 94 per cent in July 1933, and 72 per cent in October 1933. The average price of all grains fell 65 per cent from 1928 to 1932. The price decline on grain in recent years has been greater than on all other farm products except cotton and cottonseed. The price of wheat averaged 89.3 cents during the period from 1910 to 1914, $1.292 at the close of the original hearings in September 1928, 59.2 cents in 1931, 45.1 cents in 1932, and 63.6 cents toward the close of the reopened hearings in October 1933.

Average farm prices of other grains were:

	Corn	Oats	Barley	Rye
August 1909 to July 1914	64.2	39.9	....	....
Year 1928	80.2	49.3	73.6	88
January 1932	33.7	22.7	35.7	36.8
September 1932	28.0	14.4	....	....
August 1933	41.8	32.2	....	....
September 1933	46.5	32.3	....	....

[fol. 297] In Wyoming prices declined as follows:

	May 1928	December 1931
Wheat	$1.24	$0.48
Corn	1.04	.46
Oats	.61	.33
Barley	.80	.43
Rye	.94	.36

The average cost of production during this period is given as 85 cents on wheat, 65 cents on corn, 40 cents on oats, 50 cents on barley, and 65 cents on rye.

In Kansas the farm value of wheat declined from $1.19 in December 1926 to 37 cents in December 1931, or 69 per

cent. In inter-mountain and Pacific coast territories wheat prices were as follows:

	1928	1929	1930	1931	1932
Montana	$0.83	$0.05	$0.48	$0.55	$0.56
Utah	.98	1.02	.66	.54	.57
Idaho	.90	.95	.52	.46	.45
Washington	1.00	1.07	.56	.51	.46
Oregon	1.03	1.11	.58	.51	.51
California	1.18	1.20	.85	.65	.63

In Oregon during this same period the decline in labor costs is said to have been only from 28 to 36 per cent, and in general production cost less than 10 per cent. In 1931 the price received for Oregon wheat is said to have been 2 cents less than the actual cash out-of-pocket cost of production, and 52 cents less than the total cost of production, including such items as labor of the farmer, interest on debt-free land and equipment, depreciation of equipment, feed, seed, etc.

In Nebraska, during the period from 1927 to 1932, farm prices of Nebraska gain ranged as low as 28 cents for wheat, 29 cents for corn, 19 cents for oats, 22 cents for barley, and 23 cents for rye. The 1931 percentages of 1927 values were 31.36 for wheat, 34.7 for corn, 43.3 for oats, 104.17 for barley, and 34.61 for rye. In Idaho from 1928 to 1931 shrinkage in the value of the wheat crop was $18,500,000. From 1928 to 1932 the shrinkage in value of all grains was $21,182,000. In North Dakota the cash income of the wheat farmer was only 20.5 per cent in 1931, and 23.5 per cent in 1932, of the cash income of 1924.

During the same years that the farmer's selling price of grain was reduced to approximately 50 per cent of that of the pre-war period the prices of commodities purchased by [fol. 298] him ranged higher than pre-war prices by from 54 to 59 per cent in 1924 and 1925, 46 per cent in 1930, 26 per cent in 1931, 9 per cent in 1932, and 1 per cent in March 1933. The relation between the two sets of prices, commonly referred to as the purchasing power of farm products, ranged in percentage between 85 and 92 from 1923 to 1929, and was 80 in 1930, 63 in 1931, 53 in 1932, 48 in February 1933, and 50 in March, 53 in April, and 62 in May of the same year. While there has been an upward trend in the price of farm products since the summer of 1933, there has been a faster upward trend in the price of the products purchased by the farmer during the same period. In October 1933 the farmer's selling price is said to have been 78

per cent, and his purchase price 116 per cent, of pre-war prices.

Freight costs averaged 9.8 per cent of the value of the grain transported in 1925, 27.4 per cent in April 1932, and 40 per cent in March 1933. The freight cost of transporting a carload of wheat from Ipswich, S. Dak., to Minneapolis equaled the value of 172 bushels of wheat in 1925, 383 bushels in 1931, and 762 bushels in July 1932. Generally speaking, during these periods the freight costs to the first primary market approximated half of the value of the wheat. In certain Oregon counties the freight costs to Portland ranged from 9.9 to 14.5 per cent in 1928 and from 24.1 to 35.2 per cent in 1931, on the farmer's sale price. In Wyoming in 1931 the average price received by the producer of wheat shipped from nine selected stations to Omaha is said to have been only 39.6 per cent of the average cost of production (of all grains), after deduction of freight costs.

In the 93 counties of Nebraska in 1927 there were filed a total of 168,095 mortgages, aggregating $189,000,000, and in 1931 a total of 240,641 mortgages, aggregating $221,000,000.

In Oregon, tax delinquencies increased in 36 counties from 17.13 per cent in 1930 to 27.78 per cent in 1931, in 14 eastern wheat counties from 23.3 per cent in 1930 to 37.35 per cent in 1931, and 15.48 per cent in 1932 over 1931; and in all Oregon counties 13.78 per cent in 1932 over 1931. In some wheat counties 15 per cent of the 1928 taxes remained delinquent in 1932, and in others tax delinquencies in 1930 were in excess of 45 per cent. In 27 of 44 Idaho counties delinquent taxes increased from $1,402,720.24 in 1929 to $1,897,739.31 in 1930.

In Idaho of 1,185 first-mortgage State farm loans aggregating $2,867,785 as of January 1, 1929, payment delinquencies amounted to 29.9 per cent in number and 33 per cent in loan value. Of 1,132 loans outstanding as of February 29, 1932, aggregating $2,527,054, the corresponding percentages were 41 and 48.5. Of 32,438 Federal Land Bank loans outstanding as of December 31, 1928, some 7.64 per cent were delinquent in annual installments. On December [fol. 299] 31, 1931, the percentage of delinquencies of a total of 32,105 similar loans rose to 25.8. In Oregon 62 per cent of land-bank loans as of July 1, 1932, of which 75 per cent were on wheat lands, were delinquent.

In Nebraska state-bank failures totaled 41 in 1927, 60 in

1928, 77 in 1929, 40 in 1930, and 73 in 1931. In the latter year the total deposits involved were $28,000,000. In Idaho the bank failures in 1931 were twice those of the period from 1928 to 1930; during the first half of 1932 they equaled those of the entire year 1931, and exceeded those of the years 1920 to 1930; and during the period from January 1, 1928, to June 30, 1932, they totaled 22, or 19 per cent of all the banks in the State. From 1928 to 1931, in the 14 principal wheat counties in eastern Oregon 10 banks suspended operation and 13 were absorbed by consolidation.

General Contentions of Grain Farmers

The general contentions of the grain producers are that the carriers, while entitled to the cost of transportation plus a substantial profit on investment, in their present situation are merely bearing their share of a common catastrophe, affecting industry in general, including the grain growers, and are not entitled to consideration not given other industry; that the conceded returns on investment of the carriers of only 0.91 per cent during the first seven months of 1932, and only 1.64 per cent during the first seven months of 1933, are admittedly inadequate to cover fixed charges; that the traffic left to the rail carriers after serious inroads by competing agencies of transportation, including grain and grain products, cannot be charged unreasonable rates to guarantee a certain return on investment; that the retained rail traffic could not in any event sustain the added burden; that the financial condition of industry generally is as much to be considered as the financial condition of the carriers; that the revised section 15-A of the regulating statute makes it plain that the revenue needs of the carriers are not the only consideration in the making of rates; that in the last decade extensions and improvements in roadbeds, terminals, and equipment have been far ahead of the lessened demands of the present volume of traffic; that a return cannot lawfully be expected on the increased investment account represented by these excess facilities, however justified at the time of their addition they may appear to have been; that a reorganization of the capital structure of the railroads may be necessary, the same as in other lines of industry; that the present grain rates, between 140 and 150 per cent of the pre-war level, imposed a disproportionate burden on grain even before the [fol. 300] advent of the present adverse conditions, and

amount to extortion under present conditions, when grain prices are still below the pre-war level and until very recently approximated only 50 per cent of that level; that the carriers have failed to present figures comparing the costs of moving grain and other traffic; that conditions in the railroad and grain industries, as disclosed by this record, fully sustain the original findings as to rate levels; and that the change in that level, if any, should be downward.

The grain producers contend that the overbuilt character of the railroads is shown by the facts that the existing railroad plant represents an investment in road and equipment of 26 billion dollars, but is used to less than 50 per cent of its capacity, or to an extent not greater than in 1917; that during the period 1921-30 investment increased 16.73 per cent, operating expense 38.70 per cent, and total traffic only 2.66 per cent over the period 1911-20; that traffic increased 123 per cent from 1891 to 1900, 54.5 per cent from 1911 to 1920, and only 8.2 per cent from 1920 to 1930; and that during the period from 1917 to 1930 operating expenses increased 37.4 per cent, although both freight and passenger traffic showed marked declines; expense of maintenance of way and structures increased 57 per cent, and miles of track operated only 7.4 per cent; and expense of maintenance of equipment increased approximately 50 per cent, notwithstanding a decrease in the number of units of equipment, both freight and passenger, including locomotives.

The farm interests concede a considerable undermaintenance of the existing railroad plant, but contend that the undermaintenance is on an unduly enlarged and inelastic plant, overdeveloped in disregard of the competition of other forms of transportation better suited to the lighter tonnage of the present era. They urge that the wheat traffic, required largely to continue the use of rail facilities and not requiring the use of the heavier and costlier instrumentalities, should not be penalized with unreasonable rates in order to provide a normal rate of return on an abnormal investment.

Comment on Alleged Overexpansion

A substantial expansion of railroad facilities in recent years must be accepted as an established fact; likewise the apparent need for that expansion for traffic then present or in reasonable anticipation. Failure to provide means for the handling of increasing tonnage would have subjected the

carriers to merited criticism. It is equally clear that the railroad plant of today as a whole is more than adequate to handle traffic now offering or in immediate anticipation.

[fol. 301] Standard of Rate Reasonableness

The standard of reasonableness of rates on a group of commodities such as grain and grain products is neither constant nor capable of precise definition, but must take into account, at the time of review, general conditions affecting both carriers and shippers, including the value of the service rendered by the carriers, the value of the transported commodities and of the service to the shippers, and what the traffic can reasonably bear, both inherently and in comparison with other commodities and with traffic as a whole. The rates on traffic remaining to the rails after the inroads of subnormal freight offerings and alienation to competing forms of transportation must be reasonable, and cannot be increased above a reasonable level in order to insure to the carriers the return on investment they would have received on a normal volume of rail traffic. This observation is particularly pertinent to grain and grain products, which, because of their inherent character and largely due to transit afforded by the rail lines, continue to move principally by rail. The decline in the value of grain has been great in recent years. During the period of the reopened hearings, with the exception of a short period immediately preceding their close, the value of grain averaged approximately half of that of the pre-war period. Since the close of the hearings prices have improved, but are still below those of the pre-war period. The carriers' rates for the transportation of grain and grain products average between 140 and 150 percent of the pre-war rates. The only practicable test of reasonableness of the rate level on these commodities is the one of judgment of the regulating body upon all of the facts, circumstances, and conditions affecting both carriers and shippers. That standard underlies the rates herein prescribed.

General Plan of the Part 7 Adjustment

The general plan of the Part 7 adjustment was the prescription of specific local or flat rates from selected origins, or key points, in the various grain-producing areas to the so-called rate-break markets; proportional rates, lower than

the flat rates,[9] from those markets to final markets[10] and other destinations, including ports of export; through rates [fol. 302] equal to the combinations of the inbound flat rates and outbound proportionals, the so-called "rate-break combinations"; specific rates from key points to destinations other than the rate-break markets, not affected by the rate-break combinations, including ports of export;[11] directions to the carriers to readjust rates between points not specifically mentioned in the findings in reasonable relation to the rates specifically prescribed; so-called interior mileage scales for maximum application between points between which specific rates were not provided by the other methods mentioned; and export rates from Omaha, Kansas City, St. Louis, and central Illinois to eastern seaboard and Gulf ports, and from Chicago to eastern-seaboard ports.

The prescribed proportional rates, with a few exceptions, were revisions of proportional rates already in existence, the principal of which were those from the Missouri River markets to Minneapolis, Duluth, Chicago, Milwaukee, Peoria, St. Louis, Memphis, and groups in Arkansas, Louisiana, and Texas; from St. Louis and Cairo, Ill., to Memphis, Tenn., and to groups in Arkansas, Louisiana, and Texas;

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[9] The application of proportional rates is limited to shipments "from beyond", and requires, as proof of prior transportation, the surrender of a freight bill, previously registered with the transit bureau, covering an inbound rail shipment of tonnage equivalent to that shipped outbound.

[10] The rate-break markets include Minneapolis and Duluth, and the Missouri River markets from Sioux City, Iowa, south to Omaha, Nebr., Atchison, Kans., St. Joseph, Mo., and Kansas City, Mo. The final markets include Chicago, Peoria, and Cairo, in Ill., St. Louis, Mo., and Memphis, Tenn., which, however, are also rate-break markets for shipments to the eastern and southeastern territories, beyond the territorial scope of this proceeding.

[11] The key-point, proportional and export rates, present and as there prescribed, are found in tables in appendix D to the original report. Corrections and additions in some of the key-point and proportional rates are found in the text and in tables in the supplemental report. The key-point rates in appendix D are found in 74 comprehensive tables, covering representative origins throughout the respective grain-producing States.

from Duluth and Minneapolis to Chicago, Milwaukee, Peoria, and St. Louis; between the Missouri River markets; and between Minneapolis and Duluth.

Construction of Rate-Break Combinations

The rate-break combinations on the Missouri River markets from Kansas, Nebraska, and other western States to Chicago and St. Louis were the result of first checking in reasonable through rates from the origin key points to the final markets, over the direct routes through the Missouri River markets, and then breaking them back into inbound local rates to the latter markets and proportional rates beyond, on the basis of average relative mileages, resulting in proportional rates approximating the average transit balances that would have resulted if one-factor through rates with transit, in lieu of the rate-break combinations, had been prescribed. The rate-break combinations on Minneapolis from North Dakota and other northwestern States to Chicago, over direct routes through Minneapolis, also respond to this general test. The proportional rates thus established were applicable on all grain originating back of the rate-break markets, whether requiring a short or a long haul into those markets. There was no substantial objection to this method of constructing the through rates over direct [fol. 303] routes through the rate-break markets, except that some of the shippers for the longer distances, such as from Utah and Idaho, felt that the charge beyond those markets should be lower on their shipments than on shipments involving shorter hauls into the markets, on the same principle that the progression of mileage scales usually decreases with distance.

Rate-Break Combinations Over Indirect Routes

In addition to the rate-break combinations over direct routes, such as above described, rate-break combinations were established from certain specifically defined areas of grain production from which the routes through the rate-break markets to final destinations were not in all instances the shortest routes, but were viewed as sufficiently direct to warrant the application of the combinations on those markets as a reasonable basis of charge. There were objections to some of these latter adjustments, to which attention will now be directed.

Northbound Rate-Break Combinations to Duluth

To Duluth present through rates are made by combination on Minneapolis from south of the line of the North Western from Mankato westerly to Pierre. The Part 7 revision moved this line northward and made the through rates combinations from Minneapolis from on and south of the line of the Great Northern westerly northward and made the through rates combinations from Minneapolis from on and south of the line of the Great Northern westerly State line just south of Fairmont, N. Dak.; thence southwesterly by imaginary line to the South Dakota-North Dakota State line just east of La Mars, N. Dak.; thence west on the State line to the point of its intersection by the Milwaukee just west of Lemmon, S. Dak.; thence on and south of the line of the Milwaukee west to and including Montline, N. Dak.; making the Minneapolis combinations applicable from all of South Dakota instead of from approximately the southern half, as under the present adjustment. Duluth and South Dakota interests object to this change, because it makes rates from South Dakota points near the North Dakota line higher than from North Dakota points near the South Dakota line by the amount of the prescribed proportional rate of 5.5 cents from Minneapolis to Duluth, due to the fact that from North Dakota, and from South Dakota near the North Dakota border, the present rates are the same to Minneapolis and Duluth, and southward from the border the South Dakota rates grade upward into the full combinations on Minneapolis from on and south of the Mankato-to-Pierre line. It is pointed out that the distances from northern South Dakota are greater to Duluth than to Minneapolis by only [fol. 304] 109 miles instead of the 150 miles from Minneapolis to Duluth.

The original findings will be modified by making rates to Duluth by combination on Minneapolis from on and south of the line of the Chicago, Milwaukee, St. Paul & Pacific from Big Stone, S. Dak., to Lemmon, S. Dak., with a downward grading of the rates from northern South Dakota into the adjustment from North Dakota north of that line; rates to Minneapolis 17 cents from Belle Plain, N. Dak.; 19 cents from Ellendale, N. Dak.; and 20 cents from Winship, S. Dak.; rates to Duluth 2 cents higher than to Minneapolis from the Forbes, N. Dak., line of the Great Northern, and 3 cents higher than to Minneapolis from

Winship, S. Dak.; rates from north of the Forbes line to grade into rates on the Northern Pacific from Independence, N. Dak., to Fargo, N. Dak., inclusive; and rates from the latter line to be the same to Minneapolis and Duluth, with appropriate grading on the Mott, N. Dak., and Linton, N. Dak., branches, and on the main line west of Lemmon, S. Dak. This revision together with the revised proportional rate of 4.5 cents from Minneapolis to Duluth, hereinafter prescribed, should correct the situation as to the relative level of the rates from South Dakota to Duluth, complained of by the South Dakota interests and by Duluth.

Rate-Break Combinations on Kansas City from the Southwest to St. Louis and Chicago

To St. Louis and Chicago there is no present defined line of description of southwestern grain-origin territory for rate-break combinations on Kansas City. The Part 7 adjustment defined that territory as on and west of the line of the Santa Fe from Arkansas City, Kans., southerly through Oklahoma City, Okla., and Fort Worth, Tex. Oklahoma interests object to this finding, on the ground that the resulting through rate is higher than it would be if made over more direct routes than through Kansas City. From this territory the short routes to Chicago and the East are in nearly every instance through Kansas City, and the routes through Chicago are equalized through St. Louis. To St. Louis the short-line routes of all of the originating lines except the St. Louis-San Francisco are through Kansas City. From Oklahoma City, perhaps the most favorable origin for Oklahoma's contention against the rate break on Kansas City, the circuity through Kansas City does not exceed 70 miles. The route of the St. Louis-San Francisco crosses the Ozarks. The routes of the heavy grain carriers through Kansas City traverse level country over main lines of high density. The finding in the original report is adhered to.

[fol. 305] Rate-Break Combinations from Northern Kansas and from Colorado to Memphis and the Southwest

To Memphis, to Arkansas, and to groups 1, 2, and 3 in Louisiana and Texas there is no present defined line from on and north of which the through rates are combinations on Kansas City. The Part 7 adjustment made applicable

to these destinations the combinations on Kansas City from on and north of the line of the Santa Fe westerly and southwesterly from Kansas City through Emporia to Hutchinson, Kans., and the Rock Island thence to Liberal, Kans., and a maximum of 3 cents less than the combinations on Kansas City from Kansas south of that line, subject to departures necessary to a reasonable relation of rates from Kansas-Oklahoma border points.

Texas and Oklahoma interests object to this adjustment, on the ground that the rate-break combinations from on and north of the line described would be higher than rates based on mileage over routes not through Kansas City.

Colorado interests object not only to the drawing of the rate-break line through Hutchinson and Liberal, but as well to the construction of the through rates by combination on Kansas City from Colorado, or any part of Kansas, when the distances are substantially greater through Kansas City than over more direct routes. Colorado interests illustrate their objections by reference to the prescribed rates from Wray, Colo., 125 miles east of Denver, to Texas group 3, by combination on Kansas City, on a lower basis than the combination on Kansas City from Denver, and to the inability of Denver interests to route shipments from Wray through Denver without fourth-section complications, although both Wray and Denver are on the lines of the Burlington system. The Colorado interests object to the combinations on Kansas City from Colorado to Texas or to Arkansas and Louisiana west of a line south through Texarkana, Ark., and Shreveport, La.

Interior Kansas grain and milling interests would make the rates by combination on Kansas City to Memphis and the Southwest not only from on and north of the Hutchinson-Liberal line, but from all of Kansas, and from northern Oklahoma. On shipments to Kansas City, the rates from Kansas apply from six groups each extending from the northern to the southern border of the State, grading upward westerly across the State, and placing all mills in each group on an equality not only in rate to Kansas City but in the price of grain, based on the Kansas City market price. In the Part 7 revision these groups were continued, with slight modifications in the western part of the State, and the rates to Memphis and the Southwest were made by combination on Kansas City from stations in each group [fol. 306] on and north of the Hutchinson-Liberal line. To

those territories the rates are higher from northern than from southern Kansas stations in each group. Distances to Kansas City are greater, and to Memphis and the Southwest less, from Oklahoma than from Kansas, and rates from Oklahoma are higher to Kansas City and lower to Memphis and the Southwest than from Kansas. To the latter territories Oklahoma shippers therefore have an advantage over the Kansas shippers not only in a relatively lower country price resulting from the deduction of a higher inbound rate, but also in the lower rate to destination.

As a more equitable relation of rates from Kansas and Oklahoma to Memphis and the Southwest the interior Kansas mills, suggest, on shipments to those territories, the Kansas groupings used on shipments to Kansas City, with the following relation of rates from those groups and Oklahoma:

(a) If the rates from Oklahoma are to be made on considerations of strict mileage, without any definite relation to rates from Kansas, make the rates from Arkansas City, Kans., in the extreme southern part of the most easterly Kansas group, 1 cent higher than from Chilocco, Okla., just across the border from Arkansas City; grade up the groups westerly in Kansas; and make the rates from each group not on the Kansas City combination, but less than that combination by the same amount that the rate from the Arkansas City group is less than that combination; the rates to Memphis to be the same from Arkansas City as from Chilocco.

(b) If the rates from Oklahoma are not to be made on considerations of strict mileage, but are to be definitely related to the rates from Kansas, make the rates from Arkansas City, and from all points in the Arkansas City group, 1 cent higher than from Chilocco, the rates from the other Kansas groups to scale up westerly on the same gradation as to Kansas City, and the rates from all of the Kansas groups to be combinations on Kansas City.

(c) In any event these Kansas interests oppose the division of Kansas for rate-making purposes by the Hutchinson-Liberal line, or by any other line that makes the rates to Memphis and the Southwest higher from a mill in northern rather than in southern Kansas, when both mills are on a rate equality to Kansas City.

From southwestern Kansas, according to figures submitted by the interior Kansas millers, the average short-line distance through Kansas City exceeds the average short-line distance direct by 58.9 per cent to Texas, 29.1 per cent to Arkansas and Memphis, and 28.4 per cent to Louisiana. These distances are figured over multiple absolute short-line routes, over most of which no traffic actually [fol. 307] moves. From Kansas as a whole the circuity is less than from southwestern Kansas.

To the Southwest and Mississippi Valley the southwestern carriers propose the application from Kansas City of a constant transit balance, 5 cents less than the proportional rate, on shipments from Colorado and from Kansas on and north of the main line of the Missouri Pacific westerly across the central part of the State from Kansas City through Geneseo and Scott City; the proportional rate from Kansas City to apply on shipments from Kansas south of the line described and from Nebraska, Iowa, and other northern origins, because the application of the lower constant transit balance from those origins would in their opinion unduly depress the through charge.

On the whole the out-of-line hauls through Kansas City from origins on and north of the Hutchinson-Liberal line to the Southwest and Mississippi Valley are not in excess of many other out-of-line hauls, for which no penalty is charged, in this and other territories. The fact that the circuity is through a rate-break market instead of through an interior transit point is not of controlling importance, and should not penalize the rate-break market.

The prescription in the original report of through rates to Memphis and the Southwestern States named by combination on Kansas City from on and north of the Hutchinson Liberal line, and a maximum of 3 cents less than those combinations from Kansas south of that line, is herein modified by the prescription of through rates to Memphis and Louisiana by combination on Kansas City from all of Kansas, with the possible exception of Oklahoma border points, and by the prescription of through rates to Texas from Kansas south of the Hutchinson-Liberal line in some instances more, and in some less, than 3 cents under the combinations on Kansas City.

Transit Balances Versus Proportional Rates

In the Part 7 revision a fundamental change in the present adjustment was a requirement that, with one exception to be later discussed,[12] the rate-break combinations from the territories of their prescribed application should be the exclusive basis of charge, in lieu of the present dual system of proportional rates and transit balances, the latter arising from one-factor rates through rate-break markets lower than the rate-break combinations through those markets;[13] or from through rates made to equalize one rate-break [fol. 308] market with the lower rate-break combination through another market;[14] or from transit on the inter-market proportional rates.[15]

The main reasons for the requirement of the exclusive application of the rate-break combinations were that transit balances less than the proportional rates out of the rate-break markets tended to disrupt the rate-break combinations, disorganize the general rate structure, make uncertain in advance the outbound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates, depress the price of grain at the rate-

[12] Under caption "Exceptions to meet carrier competition."

[13] The one-factor rate of 38.5 cents from Enid, Okla., to Chicago applied with transit at Kansas City, with a transit balance of 15 cents from Kansas City to Chicago, in lieu of the rate-break combination of the flat rate of 23.5 cents from Enid to Kansas City and the proportional rate of 17.5 cents from Kansas City to Chicago.

[14] The combination of the flat rate of 11 cents from Lincoln, Nebr., to Omaha and the proportional rate of 17.5 cents from Omaha to Chicago, published as a through rate of 28.5 cents, with transit at Kansas City and a transit balance of 11.5 cents from Kansas City to Chicago, in lieu of the combination of the flat rate of 17 cents from Lincoln to Kansas City and the proportional rate of 17.5 cents from Kansas City to Chicago.

[15] The proportional rate of 17.5 cents from Omaha to Chicago applied with transit at Kansas City, with a transit balance of 9.5 cents from Kansas City to Chicago, in lieu of the combination of proportional rates of 8 cents from Omaha to Kansas City and 17.5 cents from Kansas City to Chicago.

break markets and, by direct reflection, at the country points, and reduce the revenues of the carriers.

The disruptive effect of transit balances on the rate-break combinations becomes evident when it is remembered that a one-factor through rate takes precedence over any combination of intermediate rates, and that the transit balance incident to such a through rate takes precedence over the proportional rate used in the rate-break combination.

The unsettling effect upon the rate-break combinations of one factor through rates less than those combinations is illustrated by the situation that gave rise to the original proportionals. The first proportional rates were published from Omaha to Kansas City, and from Omaha to Chicago, as the result of carriers from Omaha to those markets, with no rails west of Omaha, publishing as proportional rates the transit balances of one-factor through rates from the grain fields to Kansas City and Chicago, because of the refusal of the through lines to short haul themselves by participating in joint rates with the carriers from Omaha. From this beginning the present elaborate system of proportionals, published by all lines out of the rate-break markets, was evolved. The effect of the original proportionals was to achieve uniformity of outbound charge over all lines. When through rates less than the rate-break combinations were established the original situation that gave rise to the proportionals was again presented in substance, merely the form being changed from through rates less than the combinations of flat rates to through rates less than the rate-break combinations of flat rates in and proportional rates out. Sometimes the outbound movement is exclusively on transit balances, and the proportional rates become proportionals in name only. The opportunity is then presented to ask for a reduction in the proportional [fol. 309] rates down to the basis of the average transit balance.[16]

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[16] Today, on wheat and flour, transit balances, averaging 14 cents, in lieu of the proportional rate of 17.5 cents, are usually charged on shipments from Memphis to New Orleans, because of the existence of one-factor through rates from Kansas and Colorado less than the combinations on Memphis. In this proceeding the Kansas City grain interests asked for the conversion of this transit balance into an open proportional rate.

The uncertainty in advance as to the outbound basis of charge arises from the dependence of that charge upon a check of the individual shipper's range of inbound billing. The outbound charge will be a transit balance if the inbound freight bill surrendered covers a shipment from an origin from which there is a one-factor through rate less than the rate-break combination, and will be the higher proportional rate if the inbound freight bill surrendered covers a shipment from an origin from which there is no such one-factor through rate.[17] Transit balances will vary with the measure both of the through rates and of the inbound rates to the transit point.

The advantage to the user of the transit balance over the user of the higher proportional rate is evident, and increases in the ratio of the increase in the storage capacity of the respective cash-grain dealers at the rate-break markets. In other words, the greater the storage capacity the wider the selection of inbound billing and proportionately more transit balances.

Proportional rates are essential to the maintenance of a market as a price-fixing market, because largely of their making definitely known in advance the maximum outbound charge. The wider the use of the proportional rates the better the effect seems to be on the market price. Proportional rates are said to be particularly necessary in the operation of futures markets.[18]

The finding in the original report as to the effect of transit balances on the carriers' revenues was of course based on the assumption that with the exclusive application of the rate-break combinations the proportional rates would be used in lieu of the lower transit balances. The soundness of this view is challenged by the carriers on the ground that it erroneously assumes no substantial change in the routing of the grain traffic as a whole. Their contention is that the routing would be considerably changed,

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[17] The inbound rate to the transit point is paid in all instances, and the transit balance is available only upon surrender of a previously registered freight bill covering an inbound shipment equivalent in weight to that of the outbound shipment.

[18] Discussion of cash and futures markets is found at pages 640-642 of the original report.

with loss rather than preservation of the carriers' revenues, and with serious restrictions upon the transit activities of the markets. They say, for example, that a shipment from Lincoln, Nebr., to Chicago could not move on the Kansas City combination in competition with the lower Omaha combination; nor could a shipment from Omaha to [fol. 310] Chicago move on the combination of proportional rates to and from Kansas City in competition with the proportional rate direct from Omaha to Chicago; as explained in more detail in footnotes 14 and 15.

There was opposition to and support of the rule for the exclusive applications of the rate-break combinations through the rate-break markets. Strict adherence to those combinations was advocated by some of the markets; departure from it only in instances to be determined by us in advance was suggested by other markets; and reliance entirely upon the discretion of the carriers in specific instances as to the necessity for exceptions was suggested by still other markets and by the carriers.

The contention of the carriers and some of the markets is that a transit balance from a rate-break market resulting from transit on a through rate made to equalize that market with another rate-break market, or from transit on an intermarket proportional rate, as described in footnotes 14 and 15, does not tend to disrupt the rate-break combinations, because some rate-break combination is being maintained; and that only transit balances resulting from one-factor through rates less than any rate-break combination, as described in footnote 13, have that tendency.

One of the advocates of strict observance of the rate-break combinations, without exception, is Hutchinson, Kans. Hutchinson is not a rate-break market, but is an important interior market in volume of grain handled. Its grain is bought on basis of the Kansas City price minus the freight rate to Kansas City, and its shipments to eastern markets are on the rate-break combinations on Kansas City and St. Louis. Hutchinson represents that prior to the establishment of the Part 7 adjustment, when a transit balance lower than the proportional rate was available to the Kansas City dealer in reshipping from Kansas City, and only the proportional rate beyond Kansas City was available to the Hutchinson dealer in shipping direct to the East through Kansas City, it did very little business in the East; that during the period of the Part 7 adjustment,

when only the proportional rate was available both to the Kansas City dealer in reshipping from Kansas City and to the Hutchinson dealer in shipping direct through Kansas City, its business in the East substantially increased; and that since the restoration of the old adjustment its trade in the East has again declined.

More specifically, the contention of Hutchinson is that, by the switching of billing and substitution of tonnage in connection with shipments between different origins and destinations, and in connection with transit at an intermediate rate-break market on the proportional rate from another rate-break market, the intermediate rate-break market [fol. 311] has an advantage over the other rate-break market, and over the country point basing on that market, in the amount of the difference in transportation costs from the two markets, with the net result of free transportation of one of the cars from the first market to the intermediate market, an advantage that cannot inure to the benefit of the country origin shipping through the intermediate market on the rate-break combination on that market. In this contention Hutchinson assumes certain price relations between the first and the intermediate market, the Part 7 proportionals, different grades of wheat in the interchanged cars, and demands therefor at the respective destinations, that make the interchange of billing desirable. In this connection Hutchinson also points out that it is not necessary that the interchanged cars move into or out of the intermediate market at the same time, in view of the 2-year period available, under transit regulations, for the surrender of the inbound bills.

One comparison is of the charges paid by dealers at Omaha and Hutchinson, respectively, on a car of high-protein wheat from Hutchinson through Kansas City and Omaha to Minneapolis. The Hutchinson dealer, shipping through to Minneapolis, would pay the flat rate to Kansas City plus a proportional rate of 15.5 cents thence to Minneapolis. The Omaha dealer would pay, in the first instance, the flat rate to Kansas City plus the proportional rate of 6 cents thence to Omaha. To Chicago the proportional rate was 15 cents from both Omaha and Kansas City, and would apply on a shipment of low-protein wheat from a point in interior Nebraska to Chicago. By transiting at Omaha on the proportional rate from Kansas City to Chicago, the Omaha dealer would have available an inbound-transit

credit of 6 cents, which could be used in connection with the outbound shipment from Omaha to Chicago, at the transit balance of 9 cents of the proportional rate from Kansas City to Chicago, of the low-protein wheat from the interior point in Nebraska. This would have the effect of transferring the application of the proportional rate of 6 cents from Kansas City to Omaha from the Hutchinson car to the interior Nebraska car, and of giving to the Omaha dealer free transportation from Kansas City to Omaha of the Hutchinson car. The final effect would be an advantage to the Omaha dealer over the Hutchinson dealer of the difference between the proportional rates from Kansas City and Omaha to Minneapolis, which was 4 cents. In other words, the Omaha dealer, upon surrender of the freight bill on the car of low-protein wheat from Nebraska and shipping out, at the proportional rate of 11.5 cents, the high-protein wheat from Hutchinson, could sell the Hutchinson wheat at Minneapolis at a delivered price of [fol. 312] $1.115, or 4 cents lower than could the Hutchinson dealer, assuming a market price of $1 at both Omaha and Kansas City.

Another illustration purports to show an advantage of 6 cents to the Kansas City dealer over the Omaha dealer in the delivered price of Omaha wheat at Memphis, as a result of the Kansas City dealer, by a similar interchange of billing, substitution of tonnage, and transfer of the cost of transportation from Omaha to Kansas City from an Omaha car to a Hutchinson car, getting the benefit of free transportation of the Omaha car from Omaha to Kansas City.

Adjustments Alleged to Require Application of Transit Balances

The situation in respect of exceptions to the rule for exclusive application of the rate-break combinations will be better understood after a discussion of some of the more prominent instances in which a departure from the rule is said to be desirable, and in some instances imperative:

1. The rates to Chicago are a combination on Minneapolis from on and north of the Mankato-to-Pierre line of the North Western, and less than those combinations from south of that line. With some exceptions the rates from south of the line do not apply with transit at Minneapolis.

Minneapolis points out that Chicago can procure grain on a parity of through charge with Minneapolis from on and north of the line described, and on a basis lower than through Minneapolis from south thereof, and contends that it is unreasonable to deny transit at Minneapolis from points south of the line, when transit is frequently given at the latter points from on and north of the line, with out-of-line hauls as great as through Minneapolis from south of the line.[19]

2. The present proportional rate on wheat from Minneapolis to Chicago is 13 cents, but on shipments from the Missouri River markets through Minneapolis to Chicago the charge beyond Minneapolis is an arbitrary of 8 cents on shipments to Chicago for beyond, and 11 cents on shipments to Chicago proper. To Chicago the proportional rates are the same from Sioux City, Omaha, and Kansas City, and to Minneapolis 1 cent less from Sioux City and Omaha than from Kansas City. On the full combination basis the rate through Minneapolis would therefore be higher than the direct rates by 13 cents from Kansas City and by 12 cents from Sioux City and Omaha. Under the [fol. 313] arbitrary basis on shipments to Chicago for local delivery the excess via Minneapolis is 11 cents from Kansas City and 10 cents from Sioux City and Omaha; and on shipments to Chicago for beyond, 8 cents from Kansas City and 7 cents from Sioux City and Omaha. Under the Part 7 revision, which changed the relation of the proportionals to Minneapolis from Sioux City, Omaha, and Kansas City, reduced the proportionals from Minneapolis to Chicago, and required the exclusive application of the rate-break combinations, the excess of the combination of proportionals on Minneapolis over the present arbitrary basis became on shipments to Chicago, both for local delivery and beyond, 5.5 cents from Sioux City, 8.5 cents from

[19] From Mitchell, S. Dak., south of the Mankato-to-Pierre line the combination on Minneapolis is 3.5 cents higher than the direct rate for an out-of-line haul of 183 miles, while from Aberdeen, S. Dak., north of that line, the combination on Minneapolis is applied with transit at Sioux City, a rate-break market, with a transit balance 6 cents less than the proportional rate, for an out-of-line haul of 178 miles, and with transit at Cedar Rapids and Des Moines, with out-of-line hauls of 170 and 212 miles respectively.

Omaha, and 12.5 cents from Kansas City. Minneapolis states that, over tariff routes, the differences between the mileages through Minneapolis and over direct routes are not greater than in many similar instances, in this same general territory, in which no penalty is imposed for circuity of routes. Retention of the present arbitraries is requested by Minneapolis.

3. The application through Minneapolis of through rates equal to the Missouri River combinations from central Montana to St. Louis results in the use of a transit balance of 14 cents, in lieu of the proportional rate of 20 cents, from Minneapolis to St. Louis. The Part 7 tariffs made the combination on Minneapolis 1 cent higher than on the Missouri River markets. Continuation of the present transit is urged by Minneapolis.

4. The proportional rate from Duluth to Chicago is the same as the proportional rate from Minneapolis to Chicago, and under it transit is permitted at Minneapolis. The Part 7 revision made the rate from Duluth to Chicago the same as from Minneapolis to Chicago, on shipments not stopped at Minneapolis, but made the rate by combination on Minneapolis on shipments stopped in transit at Minneapolis, or 5.5 cents higher than Minneapolis. In support of the present transit Duluth contends as follows:

(a) From Duluth to Chicago the route of the Chicago, Milwaukee, St. Paul & Pacific is through Minneapolis, as are also the routes of the Great Northern and Northern Pacific in connection with the Chicago, Burlington & Quincy, a family line. The direct routes of the Chicago & North Western and the Minneapolis, St. Paul & Sault Ste. Marie are not through Minneapolis, but these carriers also have routes through Minneapolis. The average distance over the direct lines is 452 miles and through Minneapolis 550 miles.

(b) The present transit at Minneapolis benefits the producer as well as the carrier and the market, in opening up, [fol. 314] without penalty, the combined elevator capacities of Duluth and Minneapolis to northwestern grain, and in permitting the movement from Duluth to Minneapolis, without penalty, of Duluth grain which has been hedged in the Minneapolis market and delivery of which, under the rules of the Minneapolis market, may be taken at Duluth.

(c) Transit at Minneapolis can be accorded without violating the rule for the exclusive application of the rate-break combinations by canceling the proportional rate southbound between Duluth and Minneapolis, which would be practicable except in respect of certain commodities in the grain list, such as grain screenings, brought to Duluth by boat and reshipped to Minneapolis, as to which retention of the proportional rate is said to be necessary.

(d) The importance to Duluth of this Minneapolis transit is demonstrated by the facts that approximately 5 per cent of Duluth's total wheat receipts moves to Chicago, and that the rate adjustment on this 5 per cent materially affects the price of all wheat in the Duluth market.

5. The present proportional rates are higher to Duluth than to Minneapolis by 1 cent from Omaha and Sioux City and by 1.5 cents from Kansas City. The rates from Kansas City are higher than from Omaha by 1 cent to Minneapolis and by 1.5 cents to Duluth. Transit is accorded at Omaha, Sioux City, and Minneapolis under the present proportionals from Kansas City to Duluth. The Part 7 revisions made the rate-break combinations applicable on shipments from Kansas City to Duluth when stopped at Omaha, Sioux City, or Minneapolis. Continuation of the present transit is urged by Minneapolis and Duluth.

6. The contentions of Omaha, Kansas City, and St. Louis, which arise largely in connection with the adjustment of rates from Nebraska to St. Louis, Memphis, and the Southwest, are set forth in connection with the later consideration of that adjustment.

Proportional Rate Advantages

In connection with the requests for exceptions to the rule for the exclusive application of the rate-break combinations, consideration should be given to an important advantage of the rate-break combination over the one-factor through rate with transit. The proportional rate is applicable over all outbound lines upon surrender of an inbound freight bill covering an inbound shipment by rail, whether the transportation through the rate-break market is over a reasonably direct route or not. It is the equivalent in all respects, and more, of a local rate. In substance it is a special local rate from the rate-break market, with

no intermediate application as maximum, and with no re- [fol. 315] quirement of fourth-section relief for the failure of that application, because of the fiction of its status as a part of a through rate. It is designed for the final gathering in by the rate-break market, for through transportation at less than the combinations of local rates that would otherwise apply, of grain not procurable under one-factor through rates less than the rate-break combinations (and resulting transit balances less than the proportional), because of the limitations on out-of-line and back-haul movement incident to the usual application of the one-factor through rates only over reasonably direct routes, and because of the further usual requirement of outbound shipment from the transit point over the rails of the inbound carrier. The proportional rates therefore open up to the rate-break markets the widest possible range of originating and distributing territory and afford, together with the larger number of carriers usually found converging inbound to and radiating outbound from the rate-break market, in the direction of the normal flow of the grain traffic, a decided advantage to that market over the interior transit point.

Another difference between the one-factor through rate with transit and the rate-break combination is that the former, when a joint rate, must be concurred in by all of the carriers in the through route, whereas the components of the rate-break combination are separately published, with no concurrence of the inbound and outbound carriers in each other's tariffs, although a rate-break combination is generally looked upon as the equivalent of a one-factor through rate with transit, and the proportional rate as the equivalent of a transit balance. In these circumstances the division of the rate-break combination is not the subject of proceedings similar to those brought by the carriers participating in the joint rate, upon their failure to agree among themselves upon the equitable division of that rate, although conceivably the separate components of the rate-break combination might not represent a reasonable division of the through rate which the rate-break combination purports to be; and although conceivably also prescribed reductions in the separate components of that combination might well be such as to make desirable a more equitable distribution of the aggregate reduction among the carriers participating in the through route.

The publication of the rate-break combinations as one-factor through rates, concurred in by all carriers in the through routes, while not required in this proceeding, is desirable, and should include in the through tariffs all outbound carriers. This publication would not prevent the contemporaneous publication of the components separately, as at present.

[fol. 316] Rule for Exclusive Application of Rate-Break Combinations Represcribed

During the period of the Part 7 adjustment there were but few complaints against the rule for the exclusive application of the rate-break combinations. In most instances the issue was not raised prior to the appearance of the parties at the reopened hearings. In some instances the criticisms there registered were general in character, and seemed to be based more on principle than on damage actually sustained. In other instances the difficulties complained of were shown to be due largely, if not mainly, to abnormal conditions in respect of the sources of grain supply and demand. The rule should be given a more comprehensive test than was afforded during the period of the Part 7 adjustment. The finding in the original report that the rate-break combinations must be the exclusive basis of charge on shipments through the rate-break markets, when stopped at those markets is affirmed.

Exceptions to Meet Carrier Competition

In the original report (page 645) an exception to the rule for the exclusive application of the rate-break combinations was made in respect of shipments through a rate-break market to meet the carrier competition of a lower-rated route, provided the shipments were not stopped at the rate-break market or other intermediate point on the equalized route, the rate-break combination to apply on shipments stopped in transit on that route. That finding, as more fully explained in the supplemental report (page 515) [20] is adhered to.

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[20] "But transit may be permitted at an intermediate point other than the market, and not at the market, on the higher route when the intermediate transit point on the higher route is also a transit point on the direct route. For example, transit may be permitted at Fort Dodge, Iowa, but

Jurisdiction Over Gateway Rates

The question of our jurisdiction over rates through the rate-break markets has been raised by a recent decision of the Supreme Court of the United States which, in denying our power to fix the relation of rates to Galveston and New Orleans on export shipments, on the ground that Galveston and New Orleans are not localities within the [fol. 317] meaning of section 3 of the regulating statute, drew a definite analogy [1] etween the export rates to the Gulf ports and the domestic rates through interior gateways.[21]

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not at Omaha, on a shipment from Sioux City to Chicago, through Omaha and Fort Dodge, to meet the competition of a direct route from Sioux City through Fort Dodge to Chicago, with transit at Fort Dodge; or at Mankato, but not at Omaha or Sioux City, on the route from Kansas City to Minneapolis, through Omaha, Sioux City, and Mankato, to meet the competition of a direct route from Kansas City, through Des Moines and Mankato, with transit at Mankato; or at Cedar Rapids, but not at Omaha, on the route from Kansas City, through Omaha and Cedar Rapids to Chicago, to meet the competition of a direct route from Kansas City through Cedar Rapids to Chicago, with transit at Cedar Rapids."

[21] Texas & P. Ry. Co. v. United States, 289 U. S. 627: "Considered as points of origin or destination any or all of these are localities within the purview of the section. All of them may, moreover, though not considered as localities served, be involved in acts of discrimination. The situation here presented furnishes a close analogy to proportional rates or combination rates, and with respect to either of these the charge on shipments through a given gateway or port may discriminate against traffic passing through another so as to deprive a shipper of his right of choice of route through either. In such case, however, the discrimination operates upon the shipper, not upon the port. There are through rates, proportional rates, and combination rates, applicable to traffic routed through river crossings and gateways. It seems too plain for argument that the Commission has no authority, upon a showing by a gateway that under an existing tariff too much traffic passes through another, or too little through it, to readjust the rates and

There is a substantial point of difference between the situation presented in the case cited and here. The question here is primarily the inherent reasonableness of the rates not only to the rate-break markets, but also through those markets to the final markets or other destinations. The gateway relations are only incidental to the reasonableness of the total through charge. The rule for the exclusive application of the rate-break combinations is for the express purpose of according to the shipper a rate reasonable for the through service, over reasonably direct routes, and not only does not require, but does not permit, by the use of transit, of shipment at the same rate over other routes with different rate-break combinations. The findings herein affect mainly the producer and final consumer of grain, each of whom is affected by the amount both of the through charge and of the inbound flat rate and the outbound proportional, which individually and collectively affect the market price of the grain. It is the market price from which the inbound local rate to the market is deducted to make the price to the producer at the country origin, and to which the proportional rate is added to make the price to the consumer at the final destination. It can hardly be said that the producer and consumer are not representative of their localities within the meaning of section 3 of the regulating statute, or that they are not primarily and vitally interested in the reasonableness of both the through charge and its separate components to and from the market, within the meaning of that statute.

The Interior Scales

There was a difference of opinion as to the necessity for the interior scales prescribed for application in the absence [fol. 318] of key-point rates, or of rates established by the carriers in reasonable relation to the key-point rates, as suggested in the report. The interior scales were approxi-

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prescribe differentials so as to divert traffic through the complaining gateway. The interests and industries of a gateway are not entitled thus to obtain a benefit reflected from additional traffic which would be diverted by such action of the Commission. We see no difference in principle as to export or import traffic routed through ports."

mately 10 per cent higher than the key-point rates prescribed in the respective territories. The real necessity for them is doubtful, inasmuch as rates are generally available for shipments in the direction of the normal flow of the grain traffic, emergency rates are frequently published by the carriers on shipments of grain back against the normal flow of the grain traffic for feeding or seed purposes in times of drought or other emergency, and local distance scales are published by all of the carriers. In some States mileage rates for joint hauls are made on the basis of a percentage of the combinations of the mileage-scale rates of the participating carriers.

The propriety of the prescription, out of an abundance of caution to provide rates for isolated shipments, of interior scales to supplant the various scales of the carriers and State commissions, in most instances involving an increase in intrastate scales, is open to serious question. The finding in the original report prescribing interior scales is rescinded.

Rate Grading Between Stations

A considerable part of the complaint against the rates checked in by the carriers in the Part 7 revision was due to the grading of the rates between key points, and between those points and other origins. In many instances the carriers blanketed the rate from the farther-distant point too extensively, instead of grading the rates gradually upward. The grading in the revised adjustment herein prescribed should not exceed 0.5 cent for each 15 miles, subject, however, to the prescribed key-point rates as minima.

Wheat Versus Coarse Grains

Under the present adjustment rates on coarse grains (except in the territory west of the Rocky Mountains and in Illinois) are 90 per cent of the contemporaneous rates on wheat. The Part 7 rates were prescribed for application on both wheat and coarse grains. Upon the reopened record there was no objection to this equalization, except in some instances in which an increase was required in the coarse-grain rates to the prescribed common basis, such as in Iowa, North Dakota, Wisconsin, and Minnesota, where the general level of rates on both wheat and coarse grains is lower than in other western States. The value of wheat ex-

ceeds that of coarse grains, and the loading is substantially heavier, except of corn from Iowa to Chicago, which approximates that of wheat. Coarse grains compete with each [fol. 319] other as foods for human and animal consumption, and the same is largely true of wheat and coarse grains. The contention of Iowa and Wisconsin interests seems to be that a common level of rates on wheat and coarse grains, however low, cannot be reasonable for coarse grains.

The finding in the original report as to a common level of rates on wheat and coarse grains is affirmed.

Flour Differential

In some of the western territory the rates on flour are higher than on wheat.[22] The Part 7 rates were prescribed on a common basis for wheat and flour throughout the entire western district. With the exception of the Southern Pacific's request for a continuation of rates on flour higher than on wheat, there was no criticism upon the reopened record of the previous finding. The value of flour is greater, and the average loading much lighter, than of wheat. But the general relation between the two commodities has become such, after a long period of development and location of the milling industry and adaptation of production to demand that the sentiment is overwhelmingly in favor of the commen rate level on the two commodities on the part of carriers, shippers, and consumers. The record is clear that a flour differential would not only tend to a relocation of the milling business, but would be disruptive of a simplified rate adjustment admirably adapted to the best interests of producers, consumers, railroads, and millers. A careful consideration of the reopened record, verifying and emphasizing the testimony of the original record, requires affirmance of the original finding.

Transit

Under the present adjustment the number of transit stops and the granting of out-of-line hauls without separate charge

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[22] From Utah and Idaho to intermountain territory; locally within intermountain territory, except in Washington and Oregon; transcontinentally from the Missouri River to California; and from northern Texas to Mississippi River gateways, Memphis and south, except for the Southeast; flour 5 to 7 cents over wheat.

are wholly within the discretion of the carriers. As a result, except in the Northwest, several transits and substantial out-of-line hauls without separate charge are not only frequently given by the carriers, but are the common practice. The Part 7 revision permitted only two stops in transit without separate charge, and imposed a separate charge [fol. 320] of 2 cents on each stop after the second.[23] There was both criticism and support of this limitation. The advocates of a more liberal transit policy point out, for example, that grain is frequently stored in the country before it reaches the rate-break market, where a second storage for merchandising consumes the second, and last, of the stops without separate charge, leaving the miller or other merchandiser beyond the rate-break market to pay separately for a needed third transit. They point to similar necessities for a third transit stop in respect of shipments through interior transit points which are not rate-break markets. Some of the parties suggest that the limitation of transit prescribed in the original report might be found practicable upon a more extended trial than was afforded by the limited period of the Part 7 adjustment. The further trial seems warranted, and the original findings are affirmed.

The carriers, construing the findings as to transit in the original report as a mandate thoroughly to revise their general transit rules, issued their Boyd tariffs 220 and 221, which became effective as a part of the Part 7 revision. The publication of these tariffs followed comprehensive conferences between carriers and shippers in Chicago, as a result of the carriers, in accordance with established procedure, posting the proposed changes for hearing on their public docket.

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[23] "• • • The carriers' transit rules should provide for (a) a maximum of two free stops in transit (plus one inspection) of grain for storage, conditioning and milling into its direct products, additional stops to be paid for at the rate of 2 cents per hundred pounds for each stop other than inspection; (b) reasonable limitation of out-of-line and competitive routes and back-hauls; and (c) elimination of little used and obsolete transit provisions that serve mainly as a basis for unreasonable requests for transit and to bring censure upon transit tariffs generally. A stop at a primary market from which there are proportional rates will be reviewed as any other transit stop."

One of the Boyd tariffs contained lists of commodities taking the grain rates, or percentages higher than those rates. The other contained general rules governing transit, mixed-carload rules, etc. The two tariffs brought together, in consolidated form, the provisions found scattered throughout hundreds of tariffs of individual lines. They were made effective only in western trunk-line and southwestern territories and appear to have been in the main satisfactory to the shippers in those territories. Shippers in intermountain and Pacific coast territories complained of unreasonableness and lack of uniformity in their commodity lists and transit and mixed-carload rules and alleged an undue preference of shippers under the Boyd tariffs in western trunk-line and southwestern territories.

Many of the proposals of the carriers were eliminated upon complaint of shippers at the Chicago conferences. Some of the proposals may have been justified. The reopened record reveals increasing evidence of undue liberal-
[fol. 321] ity on the part of the carriers in the breadth of their commodity lists, and transit and mixed-carload rules. The specific regulation of these matters is not undertaken in this proceeding. It was explained in the supplemental report (page 514) that appendix B to the original report was merely a list of commodities taking the rates on grain and grain products in numerous then present tariffs; that the findings were not to be construed as prescribing appendix D rates for all appendix B commodities; and that the grain-products list was left for the initial establishment of the carriers, subject to review in a suspension or complaint proceeding. This observation applied to cereal-food preparations, including farina, as well as to articles other than grain and its products embraced within the appendix B list. The record strongly indicates that the rates on cereal-food preparations should be higher than on the direct products of grain. It was stated in the original report (page 654), and reiterated in the supplemental report (page 539), that a strict rule governing all phases of transit was not being undertaken at that time, but that some limitations on transit were deemed necessary. That view is again here expressed. The carriers should work out the needed reforms. The mixed-carload rules might well be revised to confine their application to commodities in the grain-family group. In no event should the carload mixture from the transit point be broader than from the origin of the through

rate. The mixing of lumber and other articles foreign to the grain-family group with grain and its products for outbound shipment from the transit point, indulged on such a wide range of foreign articles as to prompt the facetious characterization of "mouse-trap rule," not only serves further to complicate an already intricate system of transit on grain and grain products, but cannot be reconciled with a true conception of transit. The provisions of the Boyd tariffs, if again published, should be made applicable throughout the entire western district. They would be subject to suspension, upon good cause shown, like any other tariff.

Separate Transit Charge in Northwest

On the lines of the Northern Pacific, Great Northern, Milwaukee (west of about Mobridge, S. Dak.) and Oregon, Washington Railroad & Navigation Company (west of Huntington, Oreg.) to Minneapolis and Duluth eastbound; and to north Pacific coast terminals westbound, a separate charge of from 1.5 to 2.5 cents for transit is made. In the original report (page 654) it was found that the charging separately for transit on these northern lines, and the granting of transit without separate charge on other lines in the western district, subjected shippers subject to the separate charge to undue prejudice and disadvantage, and gave to shippers against whom no separate charge was made an [fol. 322] undue preference and advantage, from which the northern lines were required to cease and desist, by making no separate charge for transit. The northern lines, in the interest of uniformity, suggest the propriety of no separate charge on their lines if none is to be prescribed, or permitted, in other parts of the western district. The finding in the original report is adhered to.

Storage

In the supplemental report (page 531) a separate charge was prescribed for all stops, including the first, for storage of grain products. There was criticism from some of the carriers and shippers of this finding. The suggestion of these parties was that a stop for storage should be considered the same as any other stop in transit.

The original finding was based mainly on the thought that storage of manufactured products was not a step in

the processing and marketing of grain, which underlies the true conception of transit. Storage of grain products in transit is in many respects closely allied with transit for the manufacture of grain into products. Thus, flour is shipped to a transit point for blending with other flours for shipment out in competition with flour shipped direct from some other mill. Similarly, bran is shipped to a transit point for storage or manufacture into mixed feed, competitive with bran or mixed feed manufactured and shipped direct from some milling point. In certain sections, Louisiana and Arkansas for example, the custom of years has been to ship carloads of grain, flour, and other grain products to jobbing points and to job the shipments out in mixed carloads, to meet the necessities of that part of the country, where outbound shipments from the jobbing points, and shipments through the jobbing points, due to consuming demands in small lots and to credit requirements, among other things, are not feasible in straight carloads.

Upon further consideration of the record, as amplified upon the reopened record, the original finding as to stops for storage is modified to treat stops for storage of grain products the same as stops for merchandizing and milling of grain in transit. A stop for storage will accordingly be considered one of the two stops permitted without separate charge.

Inspection

The original report (page 654) provided for "A maximum of two free stops in transit (plus one inspection) of grain for storage, conditioning, and milling into its direct products, additional stops to be paid for at the rate of 2 cents per hundred pounds for each stop other than for inspection."

[fol. 323] Grain and Grain Products

Under present tariffs, inspection is left to the discretion of the carriers, and is usually permitted without separate charge. Under the Part 7 tariffs the usual charge for each inspection after the first was $2.25. The amount of that charge is not complained of. Complaint is made against the practice of the carriers of treating as an inspection the opening of the car at the point of delivery when the car is subsequently unloaded at that point and the ton-

nage taken into the transit account. The contention is that a separate charge for inspection should be made only in respect of shipments not only stopped for inspection, but reconsigned to another destination, and that inspection at the point of delivery is merged in the service of delivery. The contention is well founded.

Minimum Inbound Charge

In the supplemental report (page 518), for the purpose of avoiding fourth-section departures and in the interest of a proper gradation of rates from the country stations and intermediate points, including the flat rates from the markets, a minimum inbound flat rate of 10 cents to the rate-break markets was permitted. The same conclusion was reached (page 520) concerning the minimum rate under the interior scales. One serious result of the operation of this finding has been the loss of much of the short-haul traffic to the trucks. Upon further consideration the finding in the original report is rescinded.

Present Comparative Rate Levels

The present rate levels on grain and grain products throughout the western district were largely prescribed or approved in proceedings before us. It would not be profitable to review or enumerate these proceedings. It is difficult to compare rate levels in the various territories, because of the manner in which the rates are made. Thus in western trunk-line territory the through rates are largely the rate-break combinations. In southwestern, intermountain and Pacific coast territories the rates are one-factor through rates. The contention is made that the inbound flat-rate components of the rate-break combinations are in substance proportional rates, because most of the inbound shipments moved beyond.[24] The inbound flat rates to western trunk-line markets are substantially lower than the rates in the Southwest and from Utah and Idaho to Arizona, California, and the north Pacific coast, which are on sub-

[24] Although the inbound rates to the rate-break markets are published as flat rates, the fact is that about 95 per cent of the inbound grain to those markets is subsequently shipped out, as grain or its products, under proportional rates or transit balances of one-factor through rates.

stantially the same basis. They are not substantially, if any, lower than the rates in California, or from parts of [fol. 324] Oregon and Washington to Portland and Seattle. The rate-break combinations to Chicago and St. Louis are on the whole but slightly lower than the southwestern rates.

Part 7 Rate Levels

In the Part 7 revision the rates in southwestern and Pacific coast territories were made approximately 10 per cent, and in intermountain territory approximately 20 per cent, higher than in western trunk-line territory. From Montana eastbound to Minneapolis and Duluth, and westbound to Seattle and Portland, the prescribed rates were on a level between the levels prescribed in western trunk-line and southwestern territories. In the main the prescribed levels throughout the western district were satisfactory to the producers of grain, who suggest their repreScription, but who also request a reduction, rather than an increase, if any change in level is to be made. The rate-break markets and the milling interests are interested mainly in the relations rather than in the levels of the rates.

Carriers' Rate Proposals

The carriers propose for application in the territory east of the Missouri River, and east of the line of the Chicago, St. Paul, Minneapolis & Omaha from Minneapolis to Sioux City, the Part 7 keypoint rates; in western trunk-line territory west of that line, and west of the Missouri River and south to the Kansas-Oklahoma line, 120 per cent of the key-point rates; in the Southwest the scale, with modifications, prescribed in Oklahoma Corporation Comm. v. Abilene & S. Ry. Co., 69 I. C. C. 207, later to be discussed; from Washington, Oregon, and northern Idaho to north Pacific ports 120 per cent of the key-point rates prescribed in that territory; in the Mountain-Pacific Southwest territory, as defined by the carriers herein,[25] except intrastate in Oregon and possibly interstate from Montana and Idaho

[25] All points in California, Nevada, and Arizona; in Oregon, south and west of Portland; in Utah on the Western Pacific, Southern Pacific, and Los Angeles & Salt Lake west and southwest of Salt Lake City and Ogden; in New Mexico west of Albuquerque and Belen; and El Paso, Tex.

to California, no change, unless the present rates exceed a maximum scale proposed by the carriers;[26] and on transcontinental shipments, and shipments from Montana eastbound to Minneapolis and Duluth and westbound to Seattle and Portland, from Montana to California, and from southern Idaho to Seattle and Portland, no change, leaving the carriers free to make such revisions as competition may from time to time demand. In respect of the transcontinental rates from the north Pacific coast, relief from the requirement of the exclusive application of the rate-break combinations is asked, in order to permit the Washington and Oregon mills to meet by rail the competition of rail-and-ocean routes through the north Pacific ports and the Panama Canal.

[fol. 325]

The carriers also propose a revision of proportional rates from the rate-break markets, including increases in some of the rates and some changes in relations.

Revised Rate Levels

Upon further consideration of the record, as amplified upon the further hearings, it seems clear that the reductions required in the original report in the rates in southwestern, Pacific coast, and intermountain territories were too

[26] The scale proposed by the Mountain-Pacific Southwest carriers is arrived at by increasing by 20 per cent the Part 7 intermountain interior scale and the scale prescribed in Oklahoma Millers' League v. Alabama & M. R. Co., 128 I. C. C. 523, for application from Oklahoma to Louisiana, and selecting the resulting lower figures for each mileage block. The proposed scale is exactly 20 per cent higher than the intermountain interior scale for all distances up to 850 miles, and 20 per cent higher than the Oklahoma-to-Louisiana scale for longer hauls. The latter scale is slightly lower than the intermountain interior scale for the longer distances. For the shorter distances the proposed scale is somewhat less than 20 per cent in excess of the Oklahoma-to-Louisiana scale. The proposed scale is about 30 per cent higher than the scale proposed by the western trunk-line carriers for application in the territory west of the line of the Chicago, St. Paul, Minneapolis & Omaha from Minneapolis to Sioux City, and west of the Missouri River and north of the Kansas-Oklahoma line.

drastic, in view of conditions existing in these territories and their relation with conditions in western trunk-line territory, and upon a comparison of present and Part 7 rate levels in the respective territories. The relative situations in western trunk-line territory and the Southwest will first be discussed from the standpoint both of the history of the rates and of transportation conditions.

Early Southwestern Cases

The first major consideration of the rates in the Southwest, and of their relation to rates to the East, was in Farmers, Merchants, & S. Club v. Atchison, T. & S. F. Ry. Co., 12 I. C. C. 351, decided July 8, 1907, in which the rate on wheat was reduced 3.5 cents from Wichita to Galveston for export. Although reference was made to the relation between the rates from Wichita to Galveston and from Wichita to New York, the reduced rates were prescribed as inherently reasonable rates.[27] The finding further was that "the domestic rate to group 4 may properly be 10 [fol. 326] cents higher per 100 pounds than the export rate to Galveston, the same difference being observed between the different groups as now in effect." As a result of this latter finding the domestic rates from Wichita were reduced 3 cents to the then four Texas groups.

In Territory of Oklahoma v. Chicago, R. I. & P. Ry. Co., 12 I. C. C. 367, decided contemporaneously with the Farmers Club case, a reduction approximating 4 cents was made in the export rates from Oklahoma points to Galveston. Ap-

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[27] "This leaves for our consideration the inherent reasonableness of these rates. Are they, considered in themselves, fair charges for the service performed? In the past the rate from Wichita to Galveston for export has been determined by the rate from Wichita to New York. Wichita is 724 miles from Galveston, approximately 1,600 miles from New York. The cost of hauling this grain for the first 500 miles, at least, is practically as great toward the East as toward the South. The total cost of hauling it to New York must, upon every consideration, be much greater than to Galveston. We think the time has come when these rates from southern Kansas should no longer be established with respect to Kansas City, nor upon a competitive basis; but that their reasonableness should be inquired into as an independent proposition."

parently the domestic rates were not in issue in that proceeding, but evidently the same relation between the export and domestic rates would have been prescribed as in the Farmers Club case, if the domestic rates had been in issue.[28] Doubtless also the domestic rates from Oklahoma were checked in, in proper relation with the prescribed domestic rates from Kansas. It is equally clear that in both these cases the rates to Texas, while prescribed as inherently reasonable rates, were also prescribed in what was regarded as a reasonable relation with rates from Kansas to the East.

Early Eastern Cases

For 10 years following the Farmers Club case no changes were made in the rates from Kansas or Oklahoma, or from Colorado, Nebraska, or other northern States into the Southwest. To the East, however, during that period, rates from those States were successively increased in 1914 in the Five Per Cent Case, 31, I. C. C. 350, 32 I. C. C. 325, and in 1915 in the Fifteen Per Cent Case, 45 I. C. C. 303, by the increases therein authorized in the rates from Chicago, Peoria, and St. Louis, which were components of the rate-break combinations on those markets from Kansas and other western States. On June 25, 1918, and later, increased rates were made effective both to the Southwest and to the East, but in lesser amounts to the Southwest than to the East, and reduced rates became effective in the Southwest without corresponding reduced rates to the East.

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[28] "The questions involved in this case are substantially the same with those which we have just considered in the cases Farmers, Merchants and Shippers' Club of Kansas v. Atchison, Topeka & Santa Fe Railway Co. et al., and Same v. Chicago, Rock Island & Pacific Railway Company et al., supra. The territory involved lies immediately south of Kansas and is of the same general character. The traffic moves to Galveston over the same lines and under the same circumstances. The Missouri, Kansas & Texas Railway was not embraced in the Kansas cases, but there are no conditions peculiar to that system which would in any way modify the conclusions reached. The considerations which control the disposition of those cases must govern the disposition of this, and we shall apply those conclusions without repeating the discussion."

Rates to the East were increased 25 per cent, subject to a maximum increase of 6 cents on June 25, 1918; increased 40 per cent on August 26, 1920; and reduced 10 per cent on July 1, 1922. The 25-per cent increase was in each component of the rate-break combinations, and the 40-per cent [fol. 327] increase was in the eastern components of those combinations. The increases of June 25, 1918, were less in cents per hundred pounds to the Southwest than to the East, because the rates to the Southwest were largely one-factor through rates, subject only to the one increase of 25 per cent, with a maximum increase of 6 cents. The increase of August 26, 1920, to the Southwest was 35 per cent. The changes to the Southwest on July 1, 1922, were reductions of 13 per cent on wheat and 21.5 per cent on coarse grains.

Southwestern Complaint-Case Reductions

In addition to the lesser increases in rates to the Southwest than to the East, in connection with the foregoing general revisions to both territories, substantial reductions were made in the rates to the Southwest which found no counterpart to the East. In Oklahoma Corporation Comm. v. Abilene & S. Ry. Co., 69 I. C. C. 207, decided June 5, 1922, already referred to, a mileage scale which reduced the then existing rates was prescribed for application from Oklahoma to Texas. In Oklahoma Corporation Comm. v. Arkansas R. Co., 80 I. C. C. 607, decided June 11, 1923, a mileage scale lower than the Oklahoma-to-Texas scale, was prescribed for application from Oklahoma to Arkansas. In Oklahoma Corporation Comm. v. Abilene & S. Ry. Co., 101 I. C. C. 116, decided July 6, 1925, the Oklahoma-to-Arkansas scale was prescribed for application from Oklahoma to Texas, superseding the higher scale prescribed in the former case. In Oklahoma Millers' League v. Alabama & M. R., supra, decided June 17, 1927, the mileage scale prescribed from Oklahoma to Louisiana was on the basis of 20 per cent on wheat and 17.5 per cent on coarse grains of the first-class scale prescribed for application in the Southwest in Consolidated Southwestern Cases, 123 I. C. C. 203, decided 1927. Comparison between this scale and the second Oklahoma-to-Texas scale is difficult, because of the difference in mileage-block progression, but on the whole the Oklahoma-to-Louisiana scale is slightly higher than the second Oklahoma-to-Texas scale. The foregoing

scales represent the bases of rates now in effect on domestic traffic in the Southwest. The Oklahoma-to-Texas scale also applies on export shipments, except that the scale rate to Houston is applied also to Galveston for export when lower than the scale rate to Galveston. The first Oklahoma-to-Texas scale, higher than the present Oklahoma-to-Texas scale, is the scale proposed by the carriers for the Southwest. From the docket numbers the Oklahoma-to-Texas scales are referred to as the first and second 12244 scales, the Oklahoma-to-Arkansas scale as the 13406 scale, and the Oklahoma-to-Louisiana scale as the 15026 scale.

[fol. 328] Illustrative Southwestern Reductions

Illustrative of the southwestern rate reduction since June 25, 1918, are reductions from Enid, Okla., to Fort Worth, Tex., from 47.5 cents to 41 cents, or $52 on an 80,000-pound car, in Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, on January 1, 1922; a further reduction to 34 cents or another $56 a car, in the first 12244 case, effective August 6, 1922; and a still further reduction to 24 cents, or an additional $80 a car in the second 12244 case in October 1925; a total reduction in less than four years of 49.47 per cent or $188 a car. In addition a differential of 5 cents on flour over wheat was removed in the 12244 proceedings. The Part 7 revision made a still further reduction in the rates from Oklahoma to Texas, for example, from 34 to 29 cents from Enid to Texas group 3. The rate from Enid to Fort Worth was not further reduced, because of the effect of the change from the mileage to the group basis from Oklahoma to Texas.

Contention That Southwestern Scales Only Relatively Reasonable

Some of the parties urge that the foregoing southwestern scales prescribed for the Southwest are too low, and that they cannot be accepted as inherently reasonable scales, because they were prescribed in a series of proceedings in which the relations of rates was the dominant issue. It will be helpful at this point to review generally the southwestern adjustment.

The Shreveport Case

Prior to Railroad Comm. of Louisiana v. Aransas Harbor T. Ry. Co., 41 I. C. C. 83, decided July 7, 1916, the so-

called first Shreveport case, the Texas intrastate rates were graded up to 120 miles and blanketed at 15 cents for all distances beyond. During the pendency of that case the scale was regarded by the Texas commission up to 200 miles and blanketed at 17.5 cents for all distances beyond 200 miles. This blanket rate is commonly referred to as the Texas common-point rate. At that time the Texas common-point territory extended to Laredo and Amarillo on intrastate shipments, but did not extend west of Corpus Christi, Devine, San Angelo, Big Springs and Quanah on interstate shipments. Amarillo is 145 miles west of Quanah. In the case last cited the Texas scale was followed, with slight modifications, up to 200 miles, a blanket rate of 19 cents instead of 17.5 cents was prescribed for distances in excess of 200 miles, and the common-point territory was required to be the same on interstate and intrastate traffic.

[fol. 329] Extension of Texas Common-Point Territory

In Railroad Comm. of Louisiana v. Aransas Harbor T. Ry. Co., 48 I. C. C. 312, the so-called second Shreveport case, decided January 22, 1918, upon a further review asked by Texas shippers and the Texas commission, Texas common-point territory was extended west to Amarillo, 125 miles, on the Fort Worth & Denver City, and to Sweetwater, Higgins, Farwell, and intermediate points on the Panhandle & Santa Fe in Texas. Higgins is near the Oklahoma border, 125 miles northeast of Amarillo. Farwell is at the New Mexico border, 95 miles west of Amarillo. A 200-mile scale was therefore extended an additional 370 miles. Except for this extension, the rates to Galveston, on basis of the addition of differentials to the common-point rate of 19 cents, would have been 24 cents from Amarillo and 25 cents from Higgins.

Oklahoma Discriminations from Second Shreveport Case

The extension of the common-point territory seriously affected the relation of rates from Texas and Oklahoma.[29]

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[29] Thus to Galveston the rate on domestic shipments was 19 cents from Higgins, compared with 35.5 cents from Shattuck, Okla., across the border from Higgins, as prescribed or authorized in the Territory of Oklahoma case, supra.

This discrimination against Oklahoma points, arising primarily from the second Shreveport case, resulted in the first 12244 case, which lessened but failed to remove the discrimination complained of.[30] Under the reduced scale of rates prescribed in the second 12244 case the discrimination as between Oklahoma and Texas origins was further reduced, but not entirely eliminated. In the present proceeding the Oklahoma interests request the removal of all discrimination against Oklahoma in favor of Texas to Galveston and other Texas destinations by making the rates from Oklahoma on the same level as from Texas.

Present Oklahoma and Texas Adjustments

The present intrastate wheat rates in Texas common-point territory on domestic shipments are the same as the second 12244 scale interstate rates from Oklahoma to Texas for distances up to 350 miles, for both single-line and joint-line hauls. The single-line scale rate for 350 miles is 27 cents. For intrastate Texas hauls exceeding 350 miles, [fol. 330] the blanket rate is 33 cents and is the single-line second 12244 scale rate for distances between 474 and 500 miles, and the joint-line rate for distances between 450 and 475 miles. In other words, the intrastate Texas rates, in comparison with the interstate Oklahoma-to-Texas rates, are on an equality for single-line and joint-line hauls up to 350 miles; higher for single-line application up to 476 miles and for joint-line application up to 451 miles; on an equality for single-line application between 476 and 500 miles and for joint-line application between 451 and 475 miles; and lower for single-line application beyond 500 miles and for joint-line application beyond 475 miles.

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[30] The rates to Galveston became 40 cents from Shattuck and 33 cents from Higgins, the latter prescribed by the Texas commission cooperatively in that proceeding. If the Texas common-point line had not been extended to Amarillo and Higgins in the second Shreveport case, the present rates to Galveston would be 38 cents from Amarillo and 40 cents from Higgins, compared with the second 12244 scale rate of 40 cents from Shattuck, and would require a scaling downward of the rates from Higgins and Amarillo, if the 12244 basis were to be made the controlling measure of the southwestern adjustment.

On export traffic from Texas common-point territory to the Texas ports the basis applicable is the Shreveport interstate scale for distances under 350 miles and the Texas intrastate maximum rate of 33 cents for distances over 350 miles. The Shreveport scale is higher than the Texas scale for distances up to 350 miles and lower than the Texas scale for longer hauls. The Shreveport scale grades upward sharply from 7.5 cents for 10 miles to a maximum of 28 cents for 220 miles, at which distance it is 7 cents higher than the second 12244 scale. As most of the wheat crop of Texas is produced more than 350 miles from the ports, the higher Shreveport-scale rates for the shorter distances are applied on but little of the wheat exported from Texas. Nevertheless, the Texas shippers who do pay these rates want them brought down to the domestic level.

In the second 12244 case, differentials were prescribed on shipments from both Oklahoma and Texas to a small portion of differential territory in the Panhandle of Texas. This finding has been rather generally criticized as resulting in lower rates in the higher-rated differential territory than for similar hauls in the lower-rated common-point territory, for example, 9 cents from Texline, Tex., in differential territory to the first point south of Amarillo in common-point territory, compared with 17 cents for a similar haul under the common-point scale.

Shippers in Oklahoma, Colorado, and Kansas regard as a serious error the extension of the Texas common-point basis into the Panhandle of Texas and suggest that, until the Texas rates are placed on a reasonable relation with the interstate rates, there can be no permanency in the southwestern adjustment.

In the first 12244 case (page 217) the difficulties in connection with the Texas adjustment were recognized, and it was suggested that, although no good reasons existed for differing rate levels in the Southwest, the extension of the Shreveport scale into Oklahoma would require its extension throughout the entire Southwest and the application, for hauls as great as 1,000 miles, of the Texas rate for [fol. 331] 201 miles; that the proceeding was not sufficiently broad in scope for the accomplishment of exact justice; and that possibly there should be a general investigation of the southwestern rates with a view to determining whether a common scale for the entire territory would be desirable. The present proceeding for the first time presents the

entire southwestern adjustment in its relation to other adjustments in a manner permitting of comprehensive action. It seems clear that the second Shreveport scale was largely responsible for the complaint of the Oklahoma commission of discriminations in favor of Texas shippers.

Kansas-Oklahoma Discrimination

The lessening of the discrimination against Oklahoma and in favor of Texas, resulting from the prescription of the first and second 12244 scales, created a serious discrimination in favor of Oklahoma and against Kansas, because of the application of the reduced scale rates to Texas only from Oklahoma, and the continuation of the then existing rates from Kansas to Texas, which were the rates prescribed in the Farmers Club case, as modified by subsequent general revisions, which were much higher that the rates from northern Oklahoma points just across the Kansas border. This excess was so much and so precipitous that the carriers incorporated a rule into their tariffs to the effect that combinations on Oklahoma border points would be applied when lower than the through rates from Kansas. This discrimination has been the subject of persistent protests from Kansas shippers for the past several years, and was an important contributing factor in the entering of the order for the Part 7 investigation. Incidentally it is a discrimination which Oklahoma itself agrees should be removed, though not by increases in the rates from Oklahoma.

Contentions of Texas Millers as to Oklahoma-Texas Relation

Texas millers allege that not only is Oklahoma not unduly prejudiced, as alleged, by the relation of rates intrastate in Texas and interstate from Oklahoma to Texas, but that the second 12244 scale has unduly advantaged the Oklahoma miller shipping into Texas. To this scale they attribute in large part the reduction from 140 in 1902 to 33 in 1932 in the number of flour mills operating in Texas, and the reduction from 5,338,000 in 1902 to 2,930,921 in 1931 in the number of barrels of flour sold in Texas. The latter figure represents about half of the Texas consumption. They urge that while Texas is still their most important market, the invasion of that market by the rapidly growing flour mills

in Oklahoma forces Texas-ground flour out of its natural consuming territory in Texas into the keenly competitive [fol. 332] markets of California, Arizona, New Mexico, the Southeast, and through the Gulf to Atlantic seaboard and export markets. Texas produces annually an average of 28,478,000 bushels of wheat, 75 per cent of which comes from the Panhandle district. The Texas mills grind from 25,000,000 to 30,000,000 bushels, some of it imported from Oklahoma and Kansas, leaving a substantial surplus of Texas wheat to find a market in other States, including Arizona, New Mexico, California, Kansas City, Minneapolis, and the Gulf ports. In addition to the 28,478,000 bushels of wheat, Texas produces annually an average of 84,735,000 bushels of corn, 43,765,000 bushels of oats, 48,845,000 bushels of sorghums, and small quantities of rye and barley. Eighty-five per cent of the sorghums are produced in the Panhandle district. Corn, oats, and sorghums are mostly fed on the farms but, in years of large harvest, corn and sorghums move to California, Louisiana, and the Southeast. Substantial quantities of these other grains, as well as most of the wheat, must be stored in Texas after harvest. In 1932 the combined storage capacity of the mills, markets, and country elevators in Texas was 45,200,000 bushels, of which over 26,000,000 was at Fort Worth, Dallas, and Sherman. Fort Worth is the most important grain and milling center in Texas, having a storage capacity of over 16,000,000 bushels and average inbound receipts for the 10 years prior to 1932 of 24,000 carloads.

13406 and 15026 Scales Relation

The 13406 scale from Oklahoma to Arkansas was the result of a complaint mainly alleging an undue preference of intrastate shippers in Arkansas, Missouri, and Kansas, and an undue prejudice of shippers from Oklahoma to those States. That proceeding was instituted by the Oklahoma commission following its removal, on June 10, 1921, from Oklahoma intrastate rates, of the 35 per cent increase permitted therein following Increased Rates, 1920, already referred to; its restoration of the increase on November 21, 1921; and its reduction, effective December 27, 1921, of the Oklahoma intrastate rates to a basis somewhat higher than that effective immediately preceding the case last cited. In the 13406 case the Oklahoma commission proposed its intrastate scale as a reasonable maximum level for State and

interstate application in and between Oklahoma, Arkansas, Missouri, and Kansas. The finding was that the intrastate rates in Arkansas were not unduly prejudicial to shippers and localities in Oklahoma; that Oklahoma's competition was not from shippers within Arkansas, but from shippers in Kansas and Missouri; and that the main interest of the Oklahoma shippers was in the interstate rates to Arkansas. The finding was therefore limited to the prescription of the 13406 scale from Oklahoma to Arkansas. [fol. 333] The 15026 scale from Oklahoma to Louisiana was also established in response to a complaint seeking to spread from Oklahoma to Louisiana the 13406 scale previously prescribed from Oklahoma to Arkansas, and the complainant's evidence was chiefly comparisons of the rates complained of with the 13406, 12244, and other southwestern scales previously prescribed by us.[31]

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[31] "It [complainant] seeks joint rates made on the general level of those prescribed in Oklahoma Corporation Commission v. A. R. R., 80 I. C. C. 607, for application between Oklahoma and Arkansas, with 20 miles for the Mississippi crossing added to the actual distance. * * * Complainant's comparisons are almost entirely with scales prescribed by us. It contrasts the present through charges with the rates prescribed in Oklahoma Corporation v. A. & S. Ry. Co., 69 I. C. C. 207, for application on grain and grain products from Oklahoma to Texas destinations; with rates on like traffic between Oklahoma and Arkansas prescribed in Oklahoma Corporation Commission v. A. R. R., 80 I. C. C. 607, and with rates prescribed in Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, hereinafter called the Natchez case, on traffic between Natchez, Miss., and points in western Louisiana. The first two cases above mentioned were later further considered, along with other matters, in Oklahoma Corporation Commission v. A. & S. Ry. Co., 101 I. C. C. 116, hereinafter referred to as the Oklahoma case, and the rates prescribed in 80 I. C. C. 607 for application between Oklahoma and Arkansas were there likewise adopted for application on traffic from Oklahoma to Texas common-point territory, and between Oklahoma, on the one hand, and Missouri and Kansas, on the other hand. There now is, therefore, generally speaking, a rate adjustment on grain and grain products from Oklahoma to all of the surrounding States, except Louisiana,

Southwestern Scales on Basis of Canadian Rates

The second 12244 scale is practically the same as the so-called 11140 scale, prescribed in South Dakota Railroad Commrs. v. Director General, 73 I. C. C. 347, decided July 25, 1922, for application from South Dakota to Iowa, in reasonable relation to the inbound rates to Sioux City and Chicago.[32] The 11140 scale in turn was practically the same scale as was then in effect in the prairie provinces of Canada, which was on a low basis as the result of cash subsidies and tax exemptions accorded by the Canadian Government.[33] The 11140 case was decided while the complaint in 13406 against the rates from Oklahoma to Arkansas was pending, and was adopted for application in that case, and later in the second 12244 case against the rates [fol. 334] from Oklahoma to Texas. The carriers urge that the importation of a low Canadian scale into the much higher rated southwestern territory was manifestly improper. Its effect on the revenues of the southwestern carriers has been illustrated in connection with the rate from Enid to Fort Worth.

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which is never higher, but sometimes lower, than the distance-scale basis approved in the Oklahoma case. Complainant urges that with rates prescribed by us from Oklahoma across Arkansas to the west bank of the Mississippi River, there is no good reason why that scale should not be projected into southern territory, which is ordinarily considered to be entitled to rates lower than prevail in the Southwest. * * *" (128 I. C. C. 523, 524-525.)

[32] "In Rates on Grain and Grain Products, supra, we recommended adoption of rates on those commodities from South Dakota to Chicago, and a proportional rate of 15 cents from Sioux City to Chicago, the same as the proportional rate from Sioux City to St. Louis, Mo. Complainant therefore says that the problem before us is to determine and prescribe a basis of reasonable and nondiscriminatory rates to the destination territory here under consideration which will fit in and be properly aligned with the rates fixed by us to Sioux City on the west and those we approved to Chicago on the east." (73 I. C. C. 351.)

[33] Ex parte, 95, Propriety of Rates Similar to Canadian Rates on Grain, Live Stock, and Other Agricultural Products in the Northwest, Senate Document No. 183, 70th Congress, 2d Session.

Résumé of Southwestern Cases

It therefore appears that in past cases of territorial rate revisions on a percentage basis the southwestern shippers have fared better than the shippers in western trunk-line territory; that our revisions of southwestern rates have been in complaint cases mainly alleging discriminations between localities in the Southwest rather than inherent unreasonableness or undue preferences of other territories; that the present general level of southwestern rates is substantially on the same basis as the scale prescribed for application from South Dakota to Iowa, in western trunk-line territory; that the latter scale was in turn a low Canadian basis; and that the southwestern adjustment is the result of our first prescribing that basis from Oklahoma to Arkansas, later establishing it from Oklahoma to Texas, and still later establishing substantially that scale, though in a different form and on a slightly higher basis, from Oklahoma to Louisiana, in a series of complaint cases dealing primarily with the relations of rates in the southwestern States.

Southwestern Versus Western Trunk-line Central-Territory Levels

It has already been stated that the second 12244 scale is higher than the flat rates into the rate-break markets in western trunk-line territory but not higher, on the whole, than the rate-break combinations in that territory, which, rather than only the flat rates into the markets (if the proportional rates have any standing as parts of through rates), afford the proper comparison. To Central territory the second 12244 scale is actually lower than the through rate-break combinations from Kansas for the same distances.[34] These comparisons would of course afford no

[34] For example, from Hays, Kans., a representative origin in the wheat area, the respective present rates and the southwestern second 12244 scale rates for the same distances are to St. Louis 33-36, Lawrenceville, Ill., 43-39, Cincinnati 47.5-43, Chillicothe, Ohio, 51-44, Parkersburg, W. Va., 56-46. The average present rates from 13 representative origins in Kansas and 3 in Oklahoma are higher than the southwestern scale rates for the same distances by 4 cents to Detroit, 6 cents to South Bend, 4.5 cents to Cincinnati, 4 cents to Dayton, 6 cents to Cleveland, 5 cents to Louisville, and 8.5 cents to Pittsburgh.

occasion for special comment if conditions warranted the same general level of rates in the respective territories. To that question attention will now be directed.

[fol. 335] Transportation Conditions, Western Trunk-line Versus Southwest Territories

In the Southwest, transportation conditions, not only generally, but particularly in respect of grain and grain products, are less favorable than in western trunk-line territory.

The volume of originated grain is substantially less in the Southwest than in western trunk-line territory, as shown, for the 5-year period 1927-31, by the number of bushels of grain shipped, respectively, out of the county of origin, and the average per mile of railroad:

	Total Bushels	Per mile of road Bushels
Wisconsin	29,907,000	37.2
Minnesota	73,665,000	8.4
Iowa	148,869,000	15.3
Missouri	21,188,000	2.7
North Dakota	100,740,000	19.1
South Dakota	55,291,000	13.0
Kansas	177,977,000	19.1
Nebraska	115,969,000	18.8
Average	90,450,000	12.5
Oklahoma	55,596,000	8.3
Arkansas	906,000	....
Louisiana	787,000	....
Texas	106,749,000	2 9
Average	41,009,000	2.8

That the average tons carried one mile per mile of line is substantially less in southwestern than in western trunk-line territory is shown in the following table:

	1926	1927	1928	1929	1930
Western trunk-line:					
Illinois	2,854,608	2,730,584	2,828,914	2,853,906	2,394,244
Michigan (W.P.)	813,503	761,599	770,363	849,559	621,879
Wisconsin	1,174,440	1,156,194	1,169,317	1,175,871	977,991
Minnesota	1,312,772	1,338,675	1,412,501	1,442,532	1,219,862
Iowa	1,001,242	1,015,758	1,093,123	1,117,979	985,000
Missouri	1,392,245	1,386,025	1,477,952	1,539,484	1,364,594
North Dakota	653,490	712,879	831,796	728,337	630,908
South Dakota	360,970	411,311	437,625	407,645	359,532
Kansas	1,035,279	1,040,277	1,149,026	1,238,952	1,128,688
Nebraska	1,133,960	1,147,376	1,183,428	1,172,779	1,089,512
Average	1,276,930	1,272,642	1,348,884	1,372,065	1,190,246

	1926	1927	1928	1929	1930
Southwest:					
Arkansas	1,145,948	1,018,350	1,103,450	1,173,670	1,058,978
Louisiana	955,528	872,550	882,108	895,000	845,139
Oklahoma	959,843	987,100	999,846	1,058,789	889,631
Texas	952,321	1,004,834	990,796	998,414	844,845
Average	983,453	986,461	995,771	1,024,231	885.773
W.t.l. percentage of southwestern	129.8	129.0	135.4	133.9	134.3

[fol. 336] The foregoing figures reflect some duplications because taken from the records of individual lines extending from one region into another.

That the movement of grain and grain products is of a more local character in the Southwest than in the central-western and north-western regions is shown in the following table of ratios of tons terminated to tons originated in 1930:

	Southwest Ratio	Central-western Ratio	North-western Ratio
Wheat	1.36	0.86	1.05
Coarse grains	1.37	.90	.93
Ground products	1.07	.53	.64
Grain and grain products	1.25	.80	.92

The above figures also reflect some duplications, because taken from the records of individual lines extending from one region into another.

In the same year the ratio of tons of grain products to grain in total tons carried was greater in the Southwest than in the other regions. The figures were 0.63 for the southwestern region, 0.34 for the central-western region, and 0.29 for the northwestern region. A comparison of similar data for the southwestern region and the western district as a whole for the years 1931 and 1932 follow:

		South-west	Western district
Tons of products originated to 100 tons of grain originated	1931	51.16	32.98
Do	1932	56.89	38.98
Tons of products carried for each 100 tons of grain carried	1931	57.84	36.62
Do	1932	67.43	44.69
Cars of products originated for each 100 cars of grain originated	1931	85.70	57.27
Do	1932	94.53	67.07

The percentages of tons of products originating in the Southwest is greater than indicated, because the figures shown for the southwestern region are included in the totals shown for the western district.

The significance of the comparison lies in the lighter volume of movement and greater cost of transportation of grain products than of grain.

Less favorable operating conditions and higher costs resulting from lower density of traffic lead to higher unit costs. The rate level on grain and grain products is higher in southwestern than in western trunk-line territory. Nevertheless in 1924 the average revenue per ton-mile in the Southwest was 8.64 mills and in western trunk-line territory 9.34 mills. The lower ton-mile yield in southwestern terri- [fol. 337] tory apparently reflects more extensive transit and out-of-line service and a greater proportion of grain originating and terminating in the Southwest than in western trunk-line territory, among other less favorable conditions from the standpoint of relative unit costs.

A series of comparisons was submitted of relative conditions in Kansas, Nebraska, and Missouri, on the one hand, and in Oklahoma, Arkansas, Louisiana, and Texas, on the other, referred to herein as the Kansas group and the southwestern group respectively. The carriers included in the Kansas group were the Santa Fe, Burlington, Rock Island, Missouri-Kansas-Texas, Missouri Pacific, St. Joseph & Grand Island, St. Louis-San Francisco, and Union Pacific. Twenty-eight carriers are listed in the southwestern group,[35] including subsidiary lines, but not the main system, of some of the Kansas group lines, although some of these main systems, including the Santa Fe, Rock Island, and Missouri Pacific, serve a part of the southwestern group as well as the Kansas group. The merit of this criticism is admitted by the party offering the comparison, who never-

[35] Beaumont, Sour Lake & Western; Chicago, Rock Island & Gulf; Fort Smith & Western; Fort Worth & Denver City; Fort Worth & Rio Grande; Gulf, Colorado & Santa Fe; International-Great Northern; Kansas City Southern; Kansas, Oklahoma & Gulf; Louisiana & Arkansas; Louisiana, Arkansas & Texas; Missouri & North Arkansas; Missouri-Kansas-Texas of Texas; Midland Valley; New Orleans, Texas & Mexico; Panhandle & Santa Fe; San Antonio, Uvalde & Gulf; St. Louis Southwestern; St. Louis Southwestern of Texas; Texas & Fort Smith; Texas Mexican; Texas & New Orleans; Texas & Pacific; Wichita Falls & Southern; Wichita Valley; St. Louis, Brownsville & Mexico; St. Louis-San Francisco of Texas; Burlington-Rock Island.

theless urges that it in no way affects the showing as to certain trends in the Kansas group compared with the southwestern group.

The trend of operations in the two groups is shown for the years 1925 to 1930, inclusive, from which the figures for the years 1925, 1928, and 1930 are reproduced below:

	Year	Kansas group	Southwestern group	Ratio, Kansas group to southwestern group
Net ton-miles of revenue freight	1925	100	100	83.9
Do	1928	114.1	107.1	78.8
Do	1930	107.6	95.9	74.9
Freight revenue per mile of road	1925	100	100	91.7
Do	1928	112.5	101.6	82.9
Do	1930	103.7	87.4	77.3
Earnings per ton-mile of revenue freight	1925	100	100	109.3
Do	1928	98.3	94.6	105.1
Do	1930	95.8	90.7	103.5
Railway operating revenues per mile of road	1925	100	100	86.5
Do	1928	104.9	97.8	80.7
Do	1930	95	82.8	75.5
Railway operating expenses per mile of road	1925	100	100	88.8
Do	1928	102.2	95.9	83.3
Do	1930	91.9	82	79.2
Net revenue from railway operations per mile of road	1925	100	100	80.8
Do	1928	111.9	103.2	74.4
Do	1930	103	85.4	66.8

[fol. 338] At the same increase in the southwestern group as in the Kansas group in net tons of revenue freight in 1930 over 1925 (7.6 per cent) the number of net ton-miles for the 30,846.61 miles of the southwestern group would have been increased 12.5 per cent over the actual number transported, and the freight revenue, at the average earning per net ton-mile, would have been increased $39,004,168. A reduction in the southwestern group in the same proportion as in the Kansas group in the ton-mile yield in 1930 under 1925 would have increased the freight revenues of the southwestern group about 20 per cent.

Following is a comparison of averages per mile of road in the Kansas and southwestern groups for 1930:

	Railway operating income	Railway operating expenses	Net revenue from railway operations	Ton-miles, revenue freight	Freight revenue
Kansas	$15,942	$10,776	$5,166	1,128,322	$13,132
Nebraska	15,303	10,535	4,768	1,091,585	12,480
Missouri	19,078	13,845	5,233	1,362,771	14,988
Average	16,826	11,743	5,083	1,197,332	13,583
Oklahoma	12,716	8,564	4,152	903,833	10,770
Arkansas	13,468	9,846	3,622	1,058,773	10,987
Louisiana	12,329	9,747	2,582	883,164	10,281
Texas	12,671	9,391	3,280	857,411	10,378
Average	12,699	9,298	3,401	896,275	10,496

It will be noted that the railway operating income was $4,127, and the freight revenue $3,087, greater per mile in the Kansas group than in the southwestern group. It is suggested of record that the difference in the two figures indicates a greater burden cast upon freight traffic, and a lesser contribution by passenger traffic, in the southwestern group than in the Kansas group. Attention is also called to the fact that both the railway operating income and the freight revenue are higher in the Kansas group than in the southwestern group, although the higher level of rates is in the southwestern group.

There is more transit in the Southwest than in western trunk-line territory. The movement of wheat from Oklahoma and Texas to the Gulf for export is not always direct and over short routes, but is to a considerable extent routed through inspection and handling points, with interruption of movement, and over more or less circuitous routes. The movement of grain and its products in domestic channels is not under as favorable conditions as the export movement, but is a scattered movement into consuming areas over widely diffused routes, as an examination of a railroad map will show, compared with the general trend toward the East of the railroads in Kansas, Nebraska, and [fol. 339] important western trunk-line grain States. The grain States in the Southwest are Oklahoma and Texas. Arkansas and Louisiana are deficit grain States. The movement in these States is very largely in straight carloads to jobbing points and in mixed carloads outbound, a procedure tending to increase the out-of-line service and to impose additional transit costs. On Texas intrastate traffic a blanket authorization of 100 miles of free out-of-line haul is provided by tariff. The impression is not intended that

transit is not also extensively practiced in western trunk-line territory, but only that it is much more extensive in southwestern than in western trunk-line territory, with more out-of-line hauls and greater expense, because of the wider diffusion of railroad routes and less favorable transportation conditions. For example, the larger part of the Kansas crop is milled in Kansas, but perhaps 80 per cent of the products goes to the East over direct and heavy-density lines.

Petroleum rates are on a low basis in the Southwest. The contention of some of the parties is that, if relatively lower rates are to be given to the principal commodities originated in the respective territories, the adjustment on petroleum appropriately carries out that policy, and that a similar relatively lower basis should be given to grain and grain products in western trunk-line territory, which, like petroleum and cotton in the Southwest, are commodities of particularly heavy origin and transportation in that territory.

Revised Basis for the Southwest

Upon further consideration of the record, as supplemented by the further hearings in the reopened proceeding, we find that a reasonable general level for the southwestern rates, subject to modifications resulting from reasonable groupings, will be the average of the single-line and joint-line rates of the second 12244 scale, but with a change in grading beyond 500 miles by the addition, for each 100 miles, of 4 cents, instead of the present 3 cents, between 500 and 600 miles; 3 cents, instead of the present 2 cents, between 600 and 800 miles; and 2.5 cents, instead of the present 2 cents, beyond 800 miles.

The revised basis will result in increases in the Part 7 rates, but substantial reductions in the present rates. The second 12244 scale has recently been used as a basis for reparation, or prescribed by us, in Great West Mill & Elevator Co. v. Panhandle & S. F. Ry Co., 186 I. C. C. 413; Henneman Grain & Seed Co. v. Atchison, T. & S. F. Ry. Co., 200 I. C. C. 695; Portales Chamber of Commerce v. Atchison, T. & S. F. Ry. Co., 201 I. C. C. 799.

[fol. 340] Transportation Conditions, Western Trunk Line Versus Intermountain

In the intermountain and Pacific coast territories also, conditions are less favorable than in western trunk-line

territory. The proposal of the carriers in the Mountain-Pacific Southwest to make a maximum scale approximately 30 per cent higher than the scale proposed by the western trunk lines for application in the territory west of the line of the Chicago, St. Paul, Minneapolis & Omaha from Minneapolis to Sioux City, and west of the Missouri River and north of the Kansas-Oklahoma line, has been referred to. In support of their proposal the Mountain-Pacific Southwest carriers present three separate but similar studies of relative costs of handling carload freight over representative lines in the Mountain-Pacific region and in western trunk-line and southwestern territories, based on statistics reported to us by the carriers. The studies are of relations, and any erroneous assumptions are said to affect the compared territories equally, and not to affect the showing as to relations.

One of these studies compares average costs of handling freight in 1930 on the lines of 12 carriers in the Mountain-Pacific region with average costs for similar services on the lines of 11 carriers in western trunk-line territory. Substantially all of the mileage of the lines selected is in the respective territories. The study involves 20,572 miles of railroad in Mountain-Pacific territory and 29,056 miles in western trunk-line territory. This study purports to show a cost greater by 31.3 per cent in the Mountain-Pacific territory than in western trunk-line territory.

Another study for 1931 of substantially the same groups of carriers purports to show a cost greater by 35.3 per cent in Mountain-Pacific territory than in western trunk-line territory.

A third study for 1931 of the same group of Mountain-Pacific carriers and of 37 carriers operating wholly or almost wholly within western trunk-line and southwestern territories, combined, purports to show a cost greater by 36.2 per cent in the Mountain-Pacific region than in the combined western trunk-line and southwestern regions.[36]

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[36] The above figures of 31.3 per cent, 35.3 per cent, and 36.2 per cent for 1930 and 1931 are compared by the carriers with an average cost 27 per cent higher in the Mountain-Pacific group than in the western trunk-line group as found to exist in 1928, in a study, embracing substantially the same carriers as in the first carriers' study mentioned, by our Bureau of Statistics, "Territorial Variation in the Cost

Reference is made to a similar study offered by the carriers in the Livestock Case, 190 I. C. C. 626, in which the cost of operation in the Mountain-Pacific group was said to be 30.6 per cent higher than in the western trunk-line and southwestern territories, and to the three criticisms [fol. 341] of the study therein made: (1) Omission of statistics covering five major lines in each of the compared territories, (2) charging of passenger deficiency as a part of the cost of freight service, and (3) failure to show any change in conditions subsequent to the close of the initial hearings.

The omission of the Great Northern, Northern Pacific, Union Pacific (from Omaha and Kansas City via Denver and Cheyenne to Ogden), Chicago, Milwaukee, St. Paul & Pacific, and Santa Fe, constituting about 40 per cent of the mileage in the Mountain-Pacific group, is conceded, but it is urged as to these carriers that no segregation could with reasonable accuracy be made between the portions of these carriers east and west of the eastern boundary of the Mountain-Pacific region; that the inclusion of all or any of these lines in either of the compared groups would have distorted the comparison; and that their inclusion in both groups would equally have been improper; further that relative costs are obtainable by the use in each territory of carriers of substantial mileage; and that conditions on the included Southern Pacific are quite similar to those on the more or less paralleling Santa Fe, the only important carrier omitted from the Mountain-Pacific Southwest.

The criticism as to the charging of passenger deficiency to freight service is alleged by the carriers to be the product in itself of assumption and arbitrary allocation. Their general contentions are that most of the passenger expenses are not direct expenses, but merely a portion of general freight, passenger, and other expense arbitrarily assigned to passenger service upon some basis which may or may not correspond to actual fact. An erroneous assumption is said to be that passenger service should bear its full proportion of general expense, including maintenance of property used jointly for freight and passenger service, in view of the construction, and certainly now the use, of railroads

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of Carload Freight Service on Steam Railways in the United States for the Year 1928," a document not officially issued, but at the time widely distributed.

primarily for the handling of freight, with passenger business a side line or means of employing railroad facilities not required for freight movement. So regarded there can be no such thing, it is urged, as a passenger deficiency, which, in any event, is the result solely of artificial allocation of expense, based on pure assumption.

Conceding the difficulty of accurately testing the inherent and relative reasonableness of their proposed maximum scale, the Mountain-Pacific Southwest carriers nevertheless compare the scale rates with purported average costs (including origin and destination terminal costs) of handling carload freight on the Pacific lines of the Southern Pacific for certain years. Based on these average costs for 1932 the scale would fall short of average expense for distances in excess of 300 miles, and would approximate average expense for distances of 300 miles and less. For [fol. 342] the latter distances, however, its practical application in meeting motor-truck competition is said to be questionable.

According to cost studies of the carriers for the three years 1929-31 the intermountain interior scale failed to return the average cost of service even during 1929, when traffic volume was relatively high and average unit cost comparatively low. The contention is that that scale, even if regarded as a reasonable minimum in 1929, could not be so regarded today, when the volume of traffic has diminished and average costs have increased.

In general the proposed scale is not looked upon by its proponents as a reasonable maximum scale in the absolute sense, but as one that reflects in terms of cost only two of the terminal services incident to one or more transits on such a large percentage of total shipments; that will frequently be departed from to meet water or highway competition or to hold low-grade traffic to the rails; tend to raise the average revenues so much affected by such departures; remove inconsistencies in the general structure, and preserve as nearly as may be the present general rate level and revenues; and that will not be unreasonable when it can as a practical matter be applied, or produce revenues in excess of the average revenues on all traffic.

Comment on Intermountain Cost Studies

The foregoing study of relative costs is not less subject to criticism than are all such studies that depend upon

individual theory for individual acceptance. A detailed discussion of the various viewpoints as to allocations would not be profitable and will not be attempted. In the study, book values are used. Western trunk-line book values are more conservatively stated than are those in other parts of the western district. In the 1930 study the book values per mile were 55 per cent greater for the Mountain-Pacific than for the wetern trunk-line carriers. Making full allowance for criticisms, the study confirms the conclusion reached in other cases before us, that from the standpoint of relative transportation conditions the general level of rates in intermountain territory may properly be higher than in western trunk-line territory, and higher also than in southwestern territory.

Some Pacific Northwest Rates Found Not Unreasonable

The revised level for the Southwest has been described. In parts of the Mountain-Pacific region, for many years, rates have been maintained by the carriers on a basis substantially lower than even the revised southwestern basis. [fol. 343] They include rates to Seattle and Portland from the Big Bend district of Washington, from Oregon and Washington south of the Snake River, and from main-line points on the Oregon Short Line west of Pendleton. At the original hearings herein no increase in these rates was requested. In the reopened proceeding the proposal of the carriers in Washington, Oregon, and northern Idaho is to increase the Part 7 rates 20 per cent, which would result in both increases and reductions, and in aggregate revenues slightly higher than under the present rates, in the view of some of the carriers, and slightly lower in the opinion of others. The present rates just discussed cannot be viewed as unreasonable.

Other Pacific Northwest Rates Found Unreasonable

The present rates in other parts of the Mountain-Pacific region substantially exceed the revised southwestern scale. They include rates from Oregon-Washington Railroad & Navigation and Oregon Short Line branch-line points in Oregon to Seattle, Portland, and Oregon points south of Portland; from Northern Pacific branch-line points in the Big Bend district of Washington to Portland; from Washington, Montana, and northern Idaho to Oregon points south of Portland; and from Utah and southern Idaho

to California and north-coast ports. These rates are herein found unreasonable to the extent they exceed the rates shown in the appendix, which are on approximately the basis of the revised southwestern scale, and lower than herein prescribed from Washington, Oregon, Idaho, Utah, Montana, and Colorado to Arizona and New Mexico, in the heart of the intermountain territory, where traffic is lighter and the movement is against the normal flow of the traffic, through a territory of maximum transportation difficulties. These latter adjustments are discussed under appropriate headings.

California Rates Found Not Unreasonable

In California, during the period of the reopened hearings, because of severe competition of water lines and trucks, rates were voluntarily reduced by the carriers by as much as from 4.5 to 6 cents, to a basis in many instances lower than the Part 7 rates. The carriers request that no rates be prescribed between interior points generally in California, but that the carriers be left free to make revisions necessary from time to time to meet rapidly changing competitive conditions. The California rates cannot be found unreasonable.

[fol. 344] Changes Sought in Part 7 Adjustment

Attention will now be directed to specific changes sought in the Part 7 adjustment. Reference will first be made to the rate-break combinations.

The general plan of the rate-break combinations has already been described; also the origin territories from which the routes through the intervening rate-break markets to the final markets or other destinations were considered in the Part 7 revision to be sufficiently direct to warrant prescription of those combinations as the exclusive basis of charge. Reference has also been made to requests for modifications of the boundaries of some of these origin areas of the rate-break combinations, and to the necessity for a revision of the origin territory of the Minneapolis combinations to Duluth. Modifications are also asked in respect of some of the inbound flat rates and out-bound proportionals comprising the combinations through the various markets. Contentions in respect of the inbound flat rates to the rate-break markets will first be considered.

Texas and Oklahoma to Kansas City

To Kansas City the present rates from Texas and Oklahoma, except from northern Oklah ma, are made on the basis of the second 12244 scale, and are considerably higher than from Kansas to Kansas City. The Part 7 rates were prescribed from individual key points, on a lower basis than the second 12244 scale, and graded gradually upward from the Kansas-to-Kansas City basis into a level about 10 percent higher from southern Oklahoma and northern Texas than the basis prescribed from Kansas to Kansas City. Upon the reopened record the Texas interests, except those in the Panhandle district of northern Texas, including Amarillo, who support the Part 7 findings, contend that the rates from Texas to Kansas City should not exceed the rates from the same northern Texas origins southbound into Texas for similar distances, relying in this contention upon the finding in the second 12244 case and allied cases, prescribing the same level northbound to Kansas City as southbound to Texas. The Oklahoma interests urge that the rates to Kansas City should not be on a higher general level from Oklahoma than from Kansas. Relative transportation conditions, as hereinbefore discussed, do not warrant as low a basis from Oklahoma and Texas as from Kansas to Kansas City. The revised rates herein prescribed to Kansas City are higher from Oklahoma and Texas than from Kansas, and are the result of grading upward from the western trunk-line basis from Kansas to Kansas City, on the north, into the higher southwestern basis from Texas to Kansas City, on the south. Because of cross-country [fol. 345] competition the rates from southern Kansas border points are prescribed in proper relation to the rates from northern Oklahoma border points, and depart somewhat from the group basis employed to Kansas City. The revised rates from Oklahoma origins beyond the influence of cross-country competition in Kansas are relatively higher than from border points in northern Oklahoma.

Kansas to Kansas City

As stated herein in connection with the discussion of the rate-break combinations on Kansas City from on and north of the Hutchinson-Liberal line to the Southwest and Mississippi Valley, rates from Kansas to Kansas City apply from groups extending from the northern to the southern

borders of the State, grading upward westerly across the State. There are five of these main groups from which the rates are respectively 18, 19, 19.5, 20, and 20.5 cents. The 18-cent group includes Wichita and the 20.5-cent group includes points on the Kansas-Colorado border. On the Santa Fe southwest of Dodge City the rates grade upward to 21.5 cents at Elkhart, and on the Burlington's St. Francis branch in northwestern Kansas a similar grading is observed, but these are merely reflections, respectively, of the Oklahoma and Nebraska adjustments. From origins east of the 18-cent group, 17 smaller groups grade downward from 17.5 cents to 6 cents at Muncie.

In the original report, by rearrangement of some of the groups, the five main groups were made into six groups, from which the rates were made respectively, 15, 16, 17, 18.5, 20, and 22 cents. In this rearrangement no change was made in the areas of the 18-, 19-, and 19.5-cent groups, but the 20-cent group was consolidated with the eastern part of the 20.5-cent group into a new 18.5-cent group, and the remainder of the 20.5-cent group, and all of the 21.5-cent group points on the Burlington and Santa Fe, were made into two new groups, with rates of 20 and 22 cents. Other than to name rates from one or two key points, no specific finding was made as to the groups east of the 18-cent group.

It will be observed not only that the rates from the western part of the State were increased, but that a spread of as much as 2 cents was created between points which had previously taken the same rates. This resulted in serious complaints from owners of country elevators in the higher-rated groups, who stated that grain was being trucked away from their elevators to competing elevators in the lower-rated groups. The grouping should be revised in less precipitous upward steps, and in such fashion as more properly to relate the rates across the State not only to each other, but appropriately with the rates from Colorado, farther [fol. 346] west in the same general grain-producing territory.

The revised adjustment herein prescribed makes no change in the areas of the present 18-, 19-, 19.5-, and 20-cent groups, but makes the rates from those groups 16, 17, 18, and 19 cents respectively. It divides the present 20.5-cent group into three groups, with rates of 20, 21, and 22 cents. It further makes the rates from Anthony 18 cents, Ashland, Meade, and Santanta 21 cents, Englewood 22 cents, Hugo-

ton and Liberal 23 cents, and Elkhart 24 cents, to grade into the rates from Oklahoma.

From Colorado common points to Kansas City the present wheat rate is 33 cents. The Part 7 rate was 28 cents. The rate herein prescribed is 26 cents. From east of the common-point territory the rates will grade downward into the present rates from western Kansas.

Nebraska to Omaha

The rates from Nebraska to Omaha will be considered in connection with the relation of proportional rates from Omaha and Kansas City to St. Louis, to which the relation of inbound rates from Nebraska to Omaha and Kansas City is definitely related, as will appear in detail later.

Colorado to Omaha Versus Kansas City

The suggestion has been made that the rates from Colorado be made less to Omaha than to Kansas City, upon considerations of relative distances. The Colorado grain-producing area is merely a continuation of the Kansas and Nebraska fields of production. Most of the Colorado wheat is produced east of the Colorado common-point area, and north of the line of the Rock Island. The heaviest production is in the extreme northeastern section of the State, north of the Burlington's main line to Denver. Various statements of relative distances are submitted. Kansas City interests figure average distances of 580 miles to Omaha and 601 miles to Kansas City from Colorado on and north of the Missouri Pacific, and 586 miles to Omaha and 633 miles to Kansas City from all of the Colorado rate group, including points south of the Missouri Pacific. Colorado interests figure relative distances of 607 miles to Omaha and 625 miles to Kansas City. Omaha states that from the territory of production of more than 85 per cent of the Colorado wheat the average distance is 90 miles less to Omaha than to Kansas City. Rates from Colorado to Chicago and St. Louis are equalized through Omaha and Kansas City. From the Colorado group average distances are to St. Louis 1,002 miles through Omaha and 908 miles through Kansas City; to Chicago, 1,073 miles through [fol. 347] Omaha and 1,085 miles through Kansas City. Omaha states that to Memphis the average distance is only 92 miles greater through Omaha than through Kansas City

from the area producing more than 85 per cent of the Colorado wheat.

The present parity of rates to Omaha and Kansas City from the Colorado group will be continued.

Denver, Colo., to Sioux City, Iowa

From Denver the present rate is higher to Sioux City than to Omaha and Kansas City. Sioux City wants a parity of rates with the other two markets. To Minneapolis and Duluth the present proportional rates are the same from Omaha and Sioux City. The revision herein makes the proportional rate to Minneapolis and Duluth 3 cents less from Sioux City than from Omaha. To grant the request of Sioux City would give that market an undue preference over Omaha on shipments from Denver through the respective markets to Minneapolis and Duluth. The granting of the request of Sioux City is not warranted.

North Dakota to Sioux City

From North Dakota, Sioux City wants rates on the same basis as to Minneapolis, on considerations of relative distance. From North Dakota the transportation to Minneapolis is in the direction of the normal flow of the grain traffic over main lines of high density. To Sioux City the movement is across the normal current of the grain movement, largely over branch lines. The adjustment requested by Sioux City is not justified.

Winner Branch to Sioux City and Omaha

From the Winner line of the North Western the rates are the same to Sioux City and Omaha. The Part 7 revision made the rates to Sioux City less than to Omaha. Sioux City asks that the latter relation be again established. Omaha and South Dakota ask for a continuation of the present relation. The distances are less to Sioux City than to Omaha but are about the same through Sioux City and Omaha to Chicago and Milwaukee to destinations of most of the shipments. The revised rates herein to Sioux City will also apply to Omaha, the same relation to obtain from all stations in the Winner branch west of Norfolk.

Rates From Utah and Idaho to Missouri River

Present rates from Utah and Idaho to the Missouri River are based differentially over Denver and will so continue.

[fol. 348] South Dakota to Markets

The contentions of South Dakota interests in respect of alleged inequalities in the Part 7 rates from that State to the rate-break markets include the following:

The Part 7 key-point rates from producing points to the various rate-break markets were usually on a basis of approximately 91 per cent [37] of the interior scale otherwise applicable, but the prescribed key-point rates from South Dakota, in terms of relation to the scale, were relatively higher than from other States, as shown by the following comparisons: South Dakota to Chicago 95.7, Milwaukee 99, Sioux City 97, Minneapolis 97.2, Duluth 107.5, Kansas to Kansas City 88.6, Chicago 93.6, St. Louis 90, Nebraska to Omaha 91.9, Kansas City 90.4, Chicago 91.3, Minnesota to Minneapolis-Duluth 91, North Dakota to Minneapolis-Duluth 91, North Dakota to Chicago 91.4. The percentage shown from Minnesota to Minneapolis-Duluth is for interstate application. For Minnesota intrastate application the rates averaged less than 91 per cent of the scale and produced disparities in relations at border points between the intrastate rates from Minnesota and the interstate rates from South Dakota, though not as pronounced as formerly.

Comparisons of specific rates and mileages designed to show relatively higher rates from South Dakota than from other States were also submitted.

Many of the alleged inequalities are said to have been due to the improper checking in of rates by the carriers in their relation to the key-point rates from eastern South Dakota, which more closely reflected the 91 per cent basis than in western South Dakota.

Excluding origins west of the Missouri River and on the Winner branch of the North Western, the prescribed rates from South Dakota were 93.9 per cent of the scale to Minneapolis and 93.6 per cent to Chicago, compared with 92 per cent from Great Northern origins in North Dakota to

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[37] It has been explained that the interior scales were made by adding approximately 10 per cent to the working scales used in checking in the key-point rates in the respective territories of the interior-scales application. By reverse computation the key-point rates, to be on the basis of the key-point working scale, would be about 91 per cent of the otherwise applicable interior scale.

Minneapolis, 93.3 per cent from Northern Pacific origins in North Dakota to Minneapolis, 94.2 per cent to Minneapolis and 95.3 per cent to Duluth from origins in Minnesota; and about the same percentages from Iowa to the markets. These comparisons do not indicate that South Dakota was unfairly treated in the Part 7 revision, when transportation conditions from the State as a whole are considered.

[fol. 349] The part 7 key-point rates did not necessarily reflect exactly 91 per cent of the otherwise applicable interior scale in all instances. They necessarily took into account also cross-country competition, grouping, fourth-section requirements, the rate-break combinations, and other conditions usually encountered in the construction of a practicable rate adjustment. These influences, individually or collectively, may cause a substantial departure from an exact distance formula.

Moreover, the scale percentage depends largely upon the basis of the computation. For example, the Part 7 rates from northern South Dakota to Chicago were rate-break combinations on Minneapolis. The through rates were 95 per cent of the scale when computed on basis of 91 per cent of the scale to Minneapolis plus the Part 7 proportional rate beyond, but only 86 per cent of the scale when computed on basis of 91 per cent of the scale to Chicago minus the Part 7 proportional rate from Minneapolis to Chicago.

South Dakota asks that rates to the markets be prescribed from 14 additional key points, most of them either directly intermediate to or just beyond key points already established. Our finding herein, that the rate progression between key points should not exceed 0.5 cent for each 15 miles, makes the prescription of rates from additional key points unnecessary.

The revisions herein made in the rates from South Dakota, together with the reduction from 5.5 to 4.5 cents in the proportional rate from Minneapolis to Duluth, used in combinations on Minneapolis from South Dakota to Duluth, will correct any just cause for South Dakota's complaint.

North Dakota to Duluth

Because of Canadian competition, rates to Duluth are lower from northern than from southern North Dakota. The Part 7 revision made a uniform level of rates from North Dakota, and to Duluth increased the rates from north-

ern Dakota and reduced the rates from southern North Dakota. Duluth contends that no increase should be made in the rates as a whole from North Dakota to Duluth. The North Dakota interests urge tthat the rates from North Dakota to Duluth should be reduced to the basis prescribed by General Order no. 28, effective June 25, 1918. In the main the Part 7 adjustment is herein represcribed from North Dakota to Duluth and other markets. That adjustment eliminates the present transit charge in this territory.

[fol. 350] Minnesota to Duluth

From Minnesota, north of the line of the Chicago & North Western from Minneapolis south and west through Mankato and Verdi, the present rates to Minneapolis and Duluth are on a distance basis. From Minnesota south of that line to Duluth the present rates are, and the Part 7 rates were, combinations on Minneapolis. Duluth contends that the Part 7 combinations on Minneapolis were too high in comparison with other rate-break combinations and should be revised by the prescription of a proportional rate from Minneapolis to Duluth not in excess of 5 cents, in lieu of the Part 7 proportional of 5.5 cents. A proportional of 4.5 cents from Minneapolis to Duluth is herein prescribed.

Chicago Contentions as to South Dakota

Chicago wants its rates from South Dakota made on consideration of distances over direct routes rather than by combination on Sioux City and Minneapolis, the basis of many of the Part 7 rates from South Dakota. The propriety of transit at Sioux City and Minneapolis is also suggested. The Part 7 rates from South Dakota to Chicago were made on the Sioux City or Minneapolis combination in instances in which the routes through those markets were considered sufficiently direct to warrant that basis. The revised rates herein are similarly made and include some modifications.

Chicago Contentions as to Southern Minnesota

Chicago complains of the general level of rates from Minnesota points south of the Mankato-to-Verdi line of the North Western. From on and north of that line the present rates are combinations on Minneapolis and from south of the line less than those combinations. From the latter territory the present average rates are 22.4 cents on wheat and

20.29 cents on coarse grains. The local rates from Minneapolis to Chicago are 22.5 cents on wheat and 20.5 cents on coarse grains. The proportional rates from Minneapolis to Chicago are 13 cents on wheat and 11.5 cents on coarse grains. The lowest inbound rates from stations south of Minneapolis to Minneapolis are 6.5 cents on wheat and 6 cents on coarse grains. The combinations of these inbound rates and the outbound proportionals would make 19.5 cents on wheat and 17.5 cents on coarse grains, which Chicago contends should be the local rates from Minneapolis to Chicago, with rates from Minnesota south of the Mankato-to-Verdi line made in proper relation thereto, on a basis lower than the present level. The contention further is that the rates to Chicago from Minnesota south of the line mentioned are relatively higher than the combinations on Minne- [fol. 351] apolis from on and north thereof, and relatively higher than some of the rates from south of that line that apply through Minneapolis with transit.

The addition of an arbitrary minimum charge to the proportional rate out of a rate-break market in constructing the flat rate out of the market protects the local rates from the intermediate territory, and its propriety has been recognized by us.

Iowa to Chicago and St. Louis

Chicago and St. Louis each submit proposals for a revision of the rates from Iowa to those markets. St. Louis is interested mainly in the relation of its rates with the rates to Chicago, but Chicago is concerned with both the relation and the level of the rates.

The present relation of rates from Iowa to Chicago and St. Louis was approved in Chicago Board of Trade v. Atchison, T. & S. F. Ry. Co., 107 I. C. C. 319, and provides for origin group A, embracing all of Iowa north of a line drawn from Davenport west to Council Bluffs; group B from on and south of the Rock Island described, and north of the Burlington from Council Bluffs east to Ottumwa and the Rock Island thence to Farmington; and group C from on and south of the Burlington and Rock Island described. Group A is about 150 miles in width from east to west across the State and comprises about two thirds of the entire State.

The groups described govern only the relations of rates to Chicago and St. Louis. For example, the rates to the

two markets vary with the differences in distance from the respective origins in each group, but for the purpose of relation of rates the distances to each market from the respective groups were averaged and differentials prescribed under the formula of a sliding scale. Provision was also made for the computation of distances over the shortest maximum 3-line routes, and for the addition of a differential of 1 cent for joint hauls to St. Louis.

Generally speaking, the rates are 2 cents lower to Chicago than to St. Louis from group A, the same to Chicago and St. Louis from group B, and 2 cents higher to Chicago than to St. Louis from group C. The Part 7 adjustment did not provide for origin group relations, but made rates from key points in Iowa to Chicago and St. Louis, the effect of which was to reduce from 2 cents to 1 cent the difference in favor of Chicago from group A, and in favor of St. Louis from group C. It also removed the differential of 1 cent for joint hauls to St. Louis. Chicago wants an affirmance of the findings in the case cited. St. Louis, on the other hand, wants an adjustment similar to the Part 7 revision, except that it would carve out 10 small groups from groups A, B, and C.

[fol. 352] Seventy-five per cent of Iowa's surplus corn and oats is shipped from north of the Rock Island's main line from Grinnell west through Des Moines to Council Bluffs, and on and west of the Minneapolis & St. Louis from Grinnell north and slightly west through Marshall, Hampton, and Mason City to the Minnesota border, an area comprising more than the northwestern quarter of the State and a part of group A. From the eastern half of group A, from which little or no corn and oats is shipped, the distances are much shorter to Chicago than to St. Louis, but from the western half, from which most of the corn and oats are shipped, the average distance to Chicago is not more than 45 miles less than to St. Louis. St. Louis therefore contends that the inclusion in group A of the eastern points from which few shipments are made unduly favors Chicago in relative distances, and that the comparison is made more unfavorable to St. Louis by the inclusion of Milwaukee on the Chicago basis, for distances greater than to Chicago.

In purported compliance with the order in the case mentioned an addition of a cent was made to the rates to St. Louis, but not to Chicago, Milwaukee, Kansas City, or other market, for joint hauls, resulting in many rates to

St. Louis higher than to Chicago from northwestern Iowa, for shorter hauls to St. Louis than to Chicago, and in some rates to St. Louis in excess of the combinations on Council Bluffs and Des Moines. On other commodities from northwestern Iowa the rates are the same to St. Louis and Chicago, and joint-line differentials are not observed. In some instances the rates filed by the carriers were made higher to St. Louis than to East St. Louis on shipments through Illinois junctions or gateways, including Peoria.

The finding in the original report is affirmed.

Iowa to Chicago-Peoria

Chicago seeks an extension of the principle of the joint-line differential to the relation of rates from Iowa to Chicago and Peoria. To Peoria, as to St. Louis, the short distances are usually over joint routes, compared with short distances largely over single-line routes to Chicago.

From Iowa on and south of the Milwaukee's line west from the Mississippi River to Tama, and the Chicago & North Western thence to Council Bluffs, the rates to Peoria are 2 cents less than to Chicago, in recognition of the shorter mileage to Peoria than to Chicago. From Iowa north of that line the rates to Peoria and Chicago are equalized, although the distance favors Peoria. Chicago would enlarge the equalized territory by moving the dividing line south to the main line of the Rock Island from [fol. 353] Davenport west to Council Bluffs. Peoria would enlarge its differential territory to include all of Iowa except the extreme northeastern corner. In Peoria's view this would simplify the proportional rate structure from Peoria and Chicago by making necessary from these markets only two proportionals, in lieu of the present numerous proportionals, transit balances, and cut-backs of inbound rates at Peoria for equalizing purposes.

In northern Iowa the Milwaukee reaches Chicago but not Peoria, the Minneapolis & St. Louis reaches Peoria but not Chicago, and other lines reach both Peoria and Chicago. Over single-line routes the short-line distances to Chicago are over the Milwaukee and the Chicago & North Western, and to Peoria over the Rock Island and the Minneapolis & St. Louis. From Rock Island points the distances are 91 miles shorter to Peoria than to Chicago, from North Western points 19 miles shorter to Peoria than to Chicago, and from Illinois Central points 110 miles

greater to Peoria than to Chicago. From Minneapolis & St. Louis points the shortest joint-line routes are about 100 miles longer to Chicago than the single-line route of that carrier to Peoria. From Milwaukee points the shortest joint route to Peoria is much shorter than its single-line route to Chicago. Over all routes the shortest routes to Peoria are 68 miles less than the shortest routes to Chicago.

The interests of the North Western and the Milwaukee in getting their long hauls to Chicago from this territory cannot properly deprive Peoria of reasonable inbound rates, however made. The fact, urged by Chicago, that more joint hauls are required to Peoria than to Chicago cannot be given exclusive weight. The differential of 2 cents, advocated by Peoria, is fully justified.

Iowa to Chicago

As an inherently reasonable level, Chicago proposes rates from Iowa to Chicago grading from other Iowa points according to distance into rates of 12 cents on wheat and coarse grains from the Illinois-Iowa border points, 19.5 cents on wheat and 17.5 cents on coarse grains from central Iowa, 23 cents on wheat and 21 cents on coarse grains from Omaha-Council Bluffs, and 24 cents on wheat and 22 cents on coarse grains from Iowa-South Dakota border points, resulting in a spread of 11 cents on wheat and 9 cents on coarse grains as between eastern and western Iowa and in reductions in all coarse-grain rates, instead of the increases and reductions resulting from the Part 7 revision.

The revised rates herein prescribed to Chicago and other markets reflect the same general relations as the Part 7 [fol. 354] revision. They are also on the Part 7 level, except for some reductions found necessary in rechecking. The basis proposed by Chicago would reduce both the existing and the Part 7 levels, and would result in rates lower from Iowa than in other parts of western trunk-line territory, a relation not warranted in the prescription of maximum reasonable rates.

Iowa to Chicago and Milwaukee

From Iowa north of the Rock Island's main line, and from southern Minnesota, the present rates to Milwaukee and Chicago are equalized, although in many instances the distances to Milwaukee are less than to Chicago. From Iowa south of the Rock Island's main line and from

Missouri north of the Missouri River (except the main line of the Milwaukee where the distances slightly favor Chicago) rates to Milwaukee are 5 cents higher than to Chicago. The Part 7 adjustment effected an equality of Milwaukee and Chicago from this latter territory. Chicago contends that the Part 7 adjustment was not warranted, in view of the transportation to Milwaukee mostly over joint lines and to Chicago over single lines, and requests the prescription of the Chicago combination to Milwaukee over all joint-line routes to Milwaukee, or, in lieu thereof, differentials over Chicago for the joint-line service, with transit at Chicago.

We do not feel justified in reversing the finding in the original report because mainly of the joint-line hauls to Milwaukee.

Illinois Specifics

Trunk-line territory is reached from Illinois over east-and-west lines over direct routes not through Chicago, and by north-and-south lines to Chicago in connection with lines east of Chicago. The rates of the east-and-west lines over their direct routes are not applied through Chicago, the rates from points on these lines via Chicago being the combinations of their flat rates to Chicago and proportional rates beyond, considerably higher than the rates over the direct routes. Through rates equal to the rates of the east-and-west lines over their direct routes are published via Chicago by the north-and-south lines in connection with lines east of Chicago, and the north-and-south lines accept as their division of these joint rates 11.5 cents from substantially two thirds of Illinois, and from the southwestern corner of Indiana, including East St. Louis, Ill., and Evansville, Ind. This division is referred to as a "rail specific", and is unpublished.

The north-and-south lines publish, however, a rate of 11.5 cents from this same territory to Chicago, applicable only on grain reshipped from Chicago over the lake routes, and known as a "lake proportional." To St. Louis there is no proportional rate from Illinois, but from an important [fol. 355] part of central Illinois the flat rate to St. Louis is 11.5 cents, and is relatively lower than the flat rates of the north-and-south lines to Chicago. On grain from east of the Illinois River the rates to trunk-line territory are the same through St. Louis and Chicago, the east-and-

west lines accepting east of St. Louis, as their divisions of the through rates, the reshipping rates from Chicago. In connection with these rates the bridge transfer and switching charges between East St. Louis and St. Louis are absorbed,[38] whereas switching in the Chicago district in connection with the rates through Chicago are paid for extra. The lake proportionals are not applicable in connection with grain reshipped from Chicago to central territory, to which territory the routes are longer and the rates lower through St. Louis than through Chicago.

In the original report (page 668) flat rates from Illinois to St. Louis not higher than the lake proportionals for equal distances to Chicago were prescribed. The carriers complied by publishing flat rates to St. Louis not to exceed 11.5 cents from Chicago and intermediate territory. Upon the rehearing, Chicago asks for a rescinding of the order, and a continuation of the present adjustment, pointing out, among other things, the relatively lower local rates to St. Louis than to Chicago, the equalization of St. Louis with Chicago from points on the north-and-south lines in Illinois east of the Illinois River, the absorption of charges between East St. Louis and St. Louis, and St. Louis' alleged advantage in central territory. Chicago also asks for the prescription of the same relative levels of local rates to Chicago and St. Louis, over all lines.

Chicago alleges that the publication by some of the Illinois lines of intrastate rates lower than their interstate rates results in undue preference as between Illinois and Indiana elevators in the Chicago district.

Chicago and shippers from the affected Illinois points also complain of the effect of the higher local rates to Chicago of the east-and-west lines than of the north-and-south lines, which prevents the movement of grain through Chicago to the east from those origins, and results in undue preference as between shippers from these origins and from nearby cross-country stations on the north-and-south lines. For example, country elevator owners at Lawrenceville, Allendale, and Mount Carmel, on the C., C., C. & St. L. testified that their business was practically ruined because of this discrimination.

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[38] The rates through St. Louis permit of the movement from East St. Louis to St. Louis for milling or other purposes and shipment back through East St. Louis.

From central Illinois to Chicago the rates of the east-and-west lines should not be based on the circuitous routes of those lines, but on distances over the shortest routes, and should be properly related on that basis to the present 11.5-[fol. 356] cent group rate from this territory. The rates from this territory should be the same to St. Louis and Chicago, rates from other origins to be graded in proper relation thereto. The lake proportionals unduly prefer Chicago and unduly prejudice St. Louis, and should be canceled. The prescribed equality of local rates will remove any undue preference of one of these markets over the other.

Proportional Rates

In the Part 7 revision no change was made in the relations of some of the proportional rates from the rate-break markets. Substantial changes were made in others, as shown in appendix D. Upon the reopened record both support of and opposition to some of these changes were registered by some of the parties. The most far reaching of these changes, and the one most productive of controversy upon the record, was in the relation of the proportional rates from Omaha and Kansas City to the Southwest and Mississippi Valley. This change was the cause of the change also in the relations of some of the other proportionals, and will be given first consideration.

Omaha-Kansas City Relation to Memphis and the Southwest

Under the present adjustment the proportional rates from Omaha are higher than from Kansas City by 8 cents to Texas and Louisiana, 4 cents to Arkansas and 1 cent to Memphis. The proportional rate from Omaha to Kansas City is 8 cents.[39] From Omaha the combinations of proportionals on Kansas City are therefore higher than the proportionals from Omaha direct by nothing to Texas and Louisiana, by 4 cents to Arkansas, and by 7 cents to Memphis. The Part 7 adjustment reduced the proportional from Omaha to Kansas City to 6 cents and made the rates from Kansas City 6 cents less than from Omaha to Texas, Louisiana, Arkansas, and Memphis, thereby making the proportional rates from Omaha the combinations of the propor-

[39] On wheat 8 cents, on coarse grains 7 cents. The wheat rates are used as typical.

tionals to and from Kansas City. Kansas City and Memphis support this finding. Omaha and St. Louis as urgently oppose it. St. Louis is substantially interested in this adjustment, as will later appear.

Kansas City is directly intermediate between Omaha and the Southwest and Mississippi Valley over the direct routes, which are shorter by an average of 109 miles over short-line routes, and by 58 miles over actually used routes, than the routes through St. Louis. The distance from Omaha to Kansas City is 196 miles, and from Kansas City to Memphis 463 miles.

[fol. 357] The controversy between Omaha and Kansas City in respect of this adjustment centers mainly around coarse grains, principally corn, originating in the so-called South Platte region of Nebraska, south of the main line of the Union Pacific and hereinafter called the South Platte. A clear understanding of the situation requires a consideration also of the adjustment of rates from the so-called North Platte region, embracing the coarse-grain producing territory on and north of the main line of the Union Pacific in Nebraska, and in southern South Dakota, southwestern Minnesota, and northwestern Iowa, and hereinafter called the North Platte.

From the North Platte rates are generally higher to Kansas City than to Omaha by 8 cents, the amount of the proportional rate from Omaha to Kansas City. The use of this rate in connection with the proportional rates beyond Kansas City results in combinations higher on Kansas City than on Omaha by nothing to Texas and Louisiana, by 4 cents to Arkansas, and by 7 cents to Memphis, the same differences as from Omaha via Kansas City, as already explained. Stated in another way, the rates from the North Platte are combinations on both Omaha and Kansas City to Texas and Louisiana, and higher on Kansas City than on Omaha by 4 cents to Arkansas and by 7 cents to Memphis. In order to compete with Omaha from the North Platte to Arkansas and Memphis, Kansas City is compelled to transit on the proportional rates from Omaha, or on through rates equal to the Omaha combinations, thereby getting the benefit of the combinations on Omaha, lower than on Kansas City, but this transit is available only on shipments from the North Platte when routed through Omaha. On shipments from that territory not so routed Kansas City would be compelled to pay as much as 7 cents higher than Omaha, over

routes shorter in many instances through Kansas City than through Omaha.

From most of the South Platte the inbound flat rates average about 2 cents more to Kansas City than to Omaha. Inasmuch as this excess is less than the amounts by which the proportional rates from Omaha exceed the proportional rates from Kansas City to Texas, Louisiana and Arkansas, the combinations from the South Platte to those States are lower on Kansas City than on Omaha. To Memphis, to which gateway the proportional rate from Omaha is only 1 cent higher than from Kansas City, the combinations from the South Platte are lower on Kansas City than on Omaha in some instances and lower on Omaha than on Kansas City in others. To meet the competition of Kansas City from the South Platte, in instances in which the combination on Kansas City is lower than on Omaha, Omaha is compelled to transit on the inbound flat rates to Kansas City, or on through rates equal to the Kansas City combinations.

[fol. 358] The net result of the Part 7 revision was to make the through rates to Texas, Louisiana, Arkansas and Memphis by combination on both Omaha and Kansas City from the North Platte, and by combination on either Omaha or Kansas City from the South Platte, dependent on whether the inbound flat-rate difference in favor of Omaha was less than the outbound proportional-rate difference of 6 cents in favor of Kansas City; these combinations to be the exclusive basis of charge on shipments stopped at the respective markets, with no equalization of one market with another by transit.

To Texas, Louisiana, and Arkansas Omaha would have no objection to the Part 7 revision, provided its present transit on the inbound flat rates to Kansas City or on through rates equal to the Kansas City combinations are continued. To Memphis, Omaha is unalterably opposed to any change in the present relation of only 1 cent higher from Omaha than from Kansas City. The testimony concerned principally the adjustment to Memphis, to which discussion will now be directed. In principle the finding as to Memphis will govern also as to Texas, Louisiana, and Arkansas.

It has already been explained that the through rates from the North Platte to Kansas City are combinations on Omaha. The proportionals from Omaha to Memphis are combinations on St. Louis. The through rates from the North Platte to Memphis are therefore combinations on both

Omaha and St. Louis, but are not combinations on both Omaha and Kansas City, although Kansas City, as stated, is directly intermediate between Omaha and Memphis on the direct routes, shorter than the routes through St. Louis.

Contentions of Kansas City

In support of the Part 7 revision Kansas City's contentions include the following:

(a) To Memphis the change in the relation of proportional rates from Omaha from 1 cent over Kansas City to the rate-break combination on Kansas City is necessarily only in respect of shipments of coarse grains, particularly corn, which predominates in the North Platte, and is found in large quantities, with wheat, in the South Platte. Each year Kansas City must procure a part of its corn supply from the North Platte, from which the rates to Kansas City are combinations on Omaha, which makes the price of corn at Kansas City the Omaha price plus the rate from Omaha. This in turn fixes the price at Kansas City for all corn from origins on the basis of the Omaha price plus the rate from Omaha, and requires a proportional rate from Kansas City less than from Omaha in the amount of the proportional rate from Omaha. The Part 7 proportionals were merely the averages of the transit balances on which Kansas City's shipments actually moved, translated into lower open [fol. 359] proportionals. The transit balances themselves do not adequately meet the situation, because to obtain them routing of shipments is required through Omaha, which is not always practicable.

(b) The proposed adjustment to Memphis is also warranted from the standpoint of the location of Kansas City directly intermediate between Omaha and Memphis, 196 miles south of Omaha, on routes more direct than through St. Louis, on which market the rates from Omaha to Memphis break, and on direct routes to Memphis from both the North Platte and the South Platte, compared with the location of Omaha on direct routes only from the North Platte. The present transit by Kansas City on the proportional rate from Omaha presents the anomalous situation of transit by a point on the direct-route on the rate applicable over an indirect route.

(c) The application of the Kansas City combination from Omaha to Memphis is not required in respect of wheat (and

flour), which moves from Kansas City to Memphis exclusively on transit balances of through rates from southern Kansas to Memphis, not only lower than the rate-break combinations on Kansas City, but lower also than any through rates from either the North Platte or the South Platte. The price relation between Omaha and Kansas City on wheat is also different from that on corn, the price of wheat being usually the same at both markets, due to the location of the wheat fields largely west of Omaha and Kansas City, and to the predominant demand for wheat in the east. The same rate-break on Kansas City from Omaha to Memphis is requested in respect of wheat as in respect of corn, however, in the interest of uniformity in the rate adjustment on all grains, and in view also of the fact that the transit balances of these through rates from southern Kansas on wheat approximate the balances of the proportional rates from Omaha on corn.

(d) The rule for the exclusive application of the rate-break combinations should be modified to permit of a continuation of the present transit at Kansas City on the Omaha combinations, when lower than the Kansas City combinations, from the South Platte to St. Louis, published as through rates via Kansas City, in view of the location of Kansas City as an intermediate market on routes more direct than through Omaha.

(e) The rule for the exclusive application of the rate-break combinations should also be modified to permit of a continuation of the present transit at Kansas City on the proportional rate from Omaha to Chicago, for use at times in procuring wheat at Omaha of a kind not available to the millers at Kansas City, and in moving from Kansas City to Chicago, as cash grain, grain delivered on future contracts at Kansas City.

[fol. 366] Contentions of Omaha

General contentions of Omaha include the following:

(a) It is conceded by Omaha that the price of wheat at Kansas City is usually the same as at Omaha, and that Kansas City's request for the breaking of the proportional rates from Omaha to Memphis and the southwest on Kansas City is not necessitated by the relation of prices at the two markets on wheat. The contention of Kansas City as to the

necessity for the proposed adjustment on corn is not warranted by data offered of record by Omaha, showing that the average price of corn, over the last five years, is either the same at Omaha as at Kansas City or only a few cents lower, and not lower by the amount of the freight rate from Omaha to Kansas City.[40]

(b) The propriety of the present relation of the proportional rates from Omaha and Kansas City to Memphis cannot be determined from a consideration alone of relative mileages from Omaha and Kansas City, or of the southwestern adjustment. The relation of rates from Omaha and Kansas City to Memphis should be considered as a part of the eastern adjustment of rates, which equalizes rates from the Missouri River markets through Chicago and St. Louis, to the east, and through St. Louis, Memphis, and the Ohio River gateways to the entire territory south of the Ohio, and east of the Mississippi River, to much of which latter territory the distances from Omaha are not materially higher through St. Louis than through Memphis. To that territory the rates from Omaha to Memphis were first made by combination on St. Louis, and the rates from Kansas City were then made 1 cent less than the rates from Omaha.

(c) In judging relative distances to Memphis consideration must be given not only to the distances from Omaha and Kansas City, but also to the distances through those markets from the territory of origin of first importance, which is the South Platte, rather than the North Platte, on which the contentions of Kansas City are so largely based.

(d) To Memphis from all points in the South Platte the average distances are 746 miles through Kansas City and 831 miles through Omaha, a circuity through Omaha of only 85 miles, or 11 per cent. For these distances under the Part 7 interior scales the rates through Omaha would be 2 cents higher than through Kansas City. Using the scale rates inbound to the two markets and the Part 7 proportionals beyond, and transiting at one of the markets on basis of the through rates via the other when lower, the average reshipping costs from Omaha would exceed those from Kansas City by 3.02 cents. On a similar computa-

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[40] The freight rate difference of 7 cents amounts to 3.9 cents a bushel. The average price difference against Kansas City averaged close to 2 cents over the test period.

[fol. 361] tion, using inbound the interior scale rates to Omaha and the present relation of rates to Omaha and Kansas City, and outbound the Part 7 proportionals, the Omaha excess would be 2.03 cents. By these and similar comparisons the proposed combination of rates on Kansas City from Omaha to Memphis are clearly unreasonable.

(e) Under the present adjustment the differences in the inbound and outbound rates and mileages via Omaha and Kansas City from the South Platte to Memphis, on the one hand, and to St. Louis, Peoria, and Chicago on the other, about offset each other in producing through charges that are relatively reasonable, and that enable Omaha and Kansas City to compete with each other. Thus inbound the rates to Kansas City are 1.5 cents lower than they would be on a mileage relation with Omaha,[41] but outbound the rates from Omaha are lower than they would be on a mileage relation with Kansas City by 4 cents to St. Louis, and by 1.5 cents to Peoria and Chicago, the inbound advantage of Kansas City about offsetting the outbound advantage of Omaha to Peoria and Chicago, and falling short of that offset by 2.5 cents to St. Louis.

(f) The present transit at Kansas City on the proportional rate from Omaha is admittedly an exception to the usual practice of transiting at points on the indirect instead of the direct route, but here a "special situation is presented which requires special treatment." The trouble with transit at Omaha on the Kansas City combination is in the excess of the transit balance from Omaha over the proportional rate from Kansas City. With the price of wheat at Omaha and Kansas City usually the same, and the price of corn only a few cents apart, the inbound rate is important in drawing the grain into the market, and interest in the through charge is more or less academic. It is the outbound charge that is the most important, and the outbound charges of Omaha and Kansas City should be as close as possible in order for the two markets to compete. The situation in this respect at the rate-break markets is substantially different from that at the interior transit

[41] From the South Platte the inbound rates average about 2 cents higher to Kansas City than to Omaha. The Part 7 rates, made on relative mileages, averaged about 3.5 cents higher to Kansas City than to Omaha.

points, due to the fact that the rate-break markets are price-registering markets, which brings the grain to a common value at those markets, and requires approximate equality of outbound charge, whereas the interior transit points buy on the basis of the charge at the rate-break markets, and are interested only in reaching those markets on an equality of through charge, with no particular interest in either the inbound flat rate or the outbound transit balance.

[fol. 362] (g) If the present relation of the proportional rates from Omaha and Kansas City to Memphis is to be supplanted by rates from Omaha to Memphis made on the Kansas City combination, transit at Omaha on the lower Kansas City combinations will be necessary unless Omaha is to be completely shut out of the Memphis market for the Southeast. In connection with this transit, the Kansas City combinations should be published as through rates applicable via Omaha, and routing of shipments through Kansas City should not be required. Under the Part 7 adjustment, which prohibited this transit, Omaha's shipments to the Southeast practically ceased, due largely to the changed relation of rates from Omaha and Kansas City.

(h) In all the circumstances the present adjustment of proportional rates from Kansas City 1 cent under those from Omaha to Memphis, in connection with the present inbound relation of rates from the South Platte to the two markets, is eminently proper and should be continued.

Contentions of St. Louis

The general contentions of St. Louis in respect of this adjustment are as follows: The present relation of proportional rates from Omaha 1 cent over Kansas City to Memphis, with the rates from Omaha breaking on St. Louis, and with transit at St. Louis on the rate from Kansas City, should be continued. The present relation of rates from Omaha, Kansas City and St. Louis is part of an equalizing basis from the grain origins through these markets to final destinations in the Mississippi Valley, the southeastern and Carolina territories, compositely a highly competitive area for grain and its products from Texas and Oklahoma on the west, from Iowa and Kansas on the northwest, and from Illinois, Indiana, and Ohio on the north. Kansas City is an important wheat and coarse-grain market, and Omaha is predominantly a coarse-grain market. The price of

wheat at Kansas City and of coarse grains at Omaha is less than at St. Louis by the amount of the freight cost from those markets to St. Louis. With a normal eastern demand for grain, a freight rate lower from Kansas City than from Omaha by more than 1 cent would reduce the price of grain in the Southeast in the amount of the increased differential, and exclude grain from Illinois, Indiana, and Ohio, without a corresponding reduction in rate, except when no grain is available at Kansas City, or the demand for grain in the West or Southwest is sufficiently strong to advance the Kansas City price by the amount of the increased differential. The price paid for Illinois grain, which moves on the St. Louis combination to the Southeast, would be reduced. [fol. 363] The present transit at St. Louis on the proportional rate from Kansas City to Memphis is justified by the comparatively little out-of-line haul through St. Louis, shown elsewhere herein, and by the better operating conditions from Kansas City via St. Louis than over the direct routes through the Ozark Mountains.

Contentions of Memphis

Memphis interests support the Part 7 revision of the relation of the proportional rates from Omaha and Kansas City to Memphis as a forward and necessary step in making exclusively applicable from Kansas City to Memphis, under the rate-break combinations on Omaha, the open proportional rate, in lieu of the varying transit balances on which shipments now uniformly move.

Omaha and Kansas City to St. Louis and Chicago

A correct understanding of the South Platte situation also requires an explanation of the effect of the relation of proportional rates from Omaha and Kansas City on the rates to St. Louis and Chicago, as gateways for the East.

Under the present adjustment the rates to both St. Louis and Chicago are the same from Omaha and Kansas City, the rates from Omaha and Kansas City are 4 cents lower to St. Louis than to Chicago, and the outbound rates to the East are 4 cents higher from St. Louis than from Chicago, thereby equalizing St. Louis and Chicago to the East. The Part 7 revision made the rates to St. Louis 4 cents lower from Kansas City than from Omaha, and 6 cents lower from Kansas City to St. Louis than from Kansas City to

Chicago, but to Chicago made no change in the parity of rate from Omaha and Kansas City. The result was to make the rates to the East from Kansas City through St. Louis 4 cents less than from Omaha through St. Louis, and 2 cents less than from Kansas City and Omaha through Chicago. In other words, under the Part 7 revision Omaha could not compete with Kansas City via St. Louis, and neither Omaha nor Kansas City could compete via Chicago with Kansas City via St. Louis. An increase of 2 cents from St. Louis by the eastern lines restored the equalization of Kansas City via St. Louis and Chicago, and of Omaha via Chicago, but still left Omaha via St. Louis 4 cents higher than from Kansas City via St. Louis, and also 4 cents higher than from Kansas City and Omaha via Chicago. The restored equalization, to the extent indicated, was only to trunk-line and New England territories, and not to central territory.

[fol. 364] Inbound Flat Rates from South Platte to Omaha-Kansas City

A correct understanding of the contentions in respect of the Memphis adjustment further requires explanation of the inbound relation of rates from the South Platte to Omaha and Kansas City, and of the connection of that relation with the relation of the proportional rates from Omaha and Kansas City to St. Louis.

From the South Platte average distances are less to Omaha than to Kansas City. The present inbound rates are higher to Kansas City than to Omaha by 2 cents. The Part 7 rates, based on relative mileages, were higher to Kansas City than to Omaha by 3.5 cents. The present relation of Kansas City over Omaha in inbound rates from the South Platte has been maintained for many years, with the approval of Omaha, to counterbalance the outbound advantages to Omaha of the same proportional rate to St. Louis from Omaha for 414 miles as from Kansas City for 277 miles. The Part 7 adjustment, in making the proportional rate to St. Louis 4 cents higher from Omaha than from Kansas City, in lieu of the present parity of proportional rates from Omaha and Kansas City, merely gave the same recognition to relative distances outbound from, as inbound to, the two markets.

Kansas City urges that the present relation of inbound rates to Omaha and Kansas City should be continued, but

that, if the Part 7 relation of inbound rates is to be again prescribed, the rates from Omaha should be 2 cents higher than from Kansas City not only to St. Louis, but also to Peoria and Chicago, to reflect the additional mileage from Omaha; also that transit at Omaha on the inbound rates to Kansas City, in connection with shipments to Arkansas, Louisiana, and Texas should be discontinued.

Omaha also makes certain contentions concerning the inbound relation of rates from the South Platte to Omaha and Kansas City:

(a) If the rates from Omaha to Memphis are again to be made by combination on Kansas City, and transit is to be given at Omaha on shipments from the South Platte on basis of the combinations on Kansas City, when lower than on Omaha, the present relation of the inbound rates from the South Platte to Omaha and Kansas City should be continued, in order to keep as narrow as possible the spread of the transit balance at Omaha over the proportional rate from Kansas City. The maintenance of this inbound relation would provide an offset in favor of Kansas City for the advantage to Omaha in the equalization of proportional rates from Omaha and Kansas City to St. Louis and Chicago, for the longer distances from Omaha than from Kansas City.

[fol. 365] (b) If the rates from Omaha to Memphis are to be made to break on Kansas City, and transit is not to be given at Omaha on the basis of the combinations on Kansas City, when lower than on Omaha, the present relation of the inbound rates from the South Platte to Omaha and Kansas City should be discontinued, and the inbound rates to Kansas City should be made to reflect fully the additional mileage over Omaha.

(c) If transit is to be permitted at the rate-break markets, transit should be permitted at Kansas City on the Omaha combinations to St. Louis, when lower than the Kansas City combinations, but transit should not be permitted at Kansas City on the Omaha combinations to Peoria and Chicago, because of the "intolerable situations which would result in the reshipping balances."

Kansas City to Memphis via St. Louis

It has been explained that the present proportional rate from Omaha is the combination on St. Louis, and that St. Louis transits on the present proportional from Kansas

City to Memphis, which is 1 cent less than from Omaha. The Part 7 revsion made the proportional from Kansas City to Memphis 2 cents less than the combination of proportionals on St. Louis, which combination was the exclusive basis of charge on shipments from Kansas City to Memphis through St. Louis, stopped in transit at St. Louis. The contentions of St. Louis as to this situation have already been adverted to.

Omaha-Kansas City Relation Finding

The revision of the relation of the proportional rates from Omaha and Kansas City to St. Louis, Memphis, Arkansas, Louisiana, and Texas is along the same general lines as the revision in the original report. To the Southwest, and to Memphis locally and for the Mississippi Valley, the proportional rates from Omaha will be combinations on both St. Louis and Kansas City. To St. Louis the proportional rate from Kansas City will be 2 cents less than from Omaha. The proportional rate from Kansas City to Memphis will be 4 cents lower than the combination on St. Louis. The narrowing from 4 cents to 2 cents of the advantage of Kansas City over Omaha to St. Louis necessitates a corresponding narrowing by 2 cents of the advantage of Omaha over Kansas City in the inbound local rates from the South Platte. This has been accomplished by increasing to Omaha and reducing to Kansas City the inbound local rates prescribed in the original report. In most instances these changes are 1 cent. In some instances they exceed 1 [fol. 366] cent, in order to make the combinations through Kansas City the same as the combinations through Omaha to St. Louis. In the latter instances in the Part 7 adjustment the combinations were higher on Kansas City than on Omaha, although the distances were shorter through Kansas City than through Omaha.

Present rates from Omaha and Kansas City to the Southeast and the Carolinas are equalized through Cairo and Memphis by making the outbound rates from Memphis 6 cents lower than from Cairo and the inbound rates to Memphis 6 cents higher than to Cairo. The prescription herein of rates from Kansas City to Cairo 4 cents less than to Memphis, and from Omaha to Cairo 8 cents less than to Memphis, will make through rates from Omaha 2 cents lower via Cairo than via Memphis, and the rates from Kansas City 2 cents lower via Memphis than via Cairo. The

southeastern rates are not before us in this proceeding. Pending consideration of those rates transit should be permitted at Cairo on the Memphis combination from Kansas City, and at Memphis on the Cairo combination from Omaha. The same transit should be accorded to St. Louis, on the route to Cairo.

Missouri River to Minneapolis Proportionals

From the Missouri River to Minneapolis the present relation of rates from Kansas City and Omaha is somewhat similar to the southbound relation of these markets to Memphis. The present proportional is the same from Sioux City and Omaha and 1.5 cents higher from Kansas City. The Part 7 revision made the rate from Omaha 3 cents higher than from Sioux City, and the rate from Kansas City 4 cents higher than from Omaha, to make a change in relation northbound comparable with the change southbound to Memphis. The revised rate from Omaha was on the Sioux City combination, but the revised rate from Kansas City was 2 cents less than the combination on Omaha.[42] The revised adjustment herein prescribed makes the rate from Kansas City by combination on Omaha, and the rate from Omaha by combination on Sioux City.

This finding rejects the suggestion of Kansas City that the proportional rate to Minneapolis should be the same from Kansas City as from Omaha, on the theory that the rate from the Missouri River should be treated as a component of a through rate to the East over a route through Minneapolis, competitive with the routes through Chicago and St. Louis.

[fol. 367] Minneapolis-Duluth Relation from Missouri River

The present proportional rate to Duluth is higher than to Minneapolis by 1 cent from Sioux City and Omaha, and by 1.5 cents from Kansas City. The present proportional rate from Minneapolis to Duluth is 6.5 cents. The Part 7 revision made the rate to Duluth by combination on Minneapolis from Sioux City, Omaha, and Kansas City, and re-

[42] Present rate to Minneapolis from Sioux City and Omaha 16.5 cents, from Kansas City 17.5 cents. Part 7 rate to Minneapolis from Sioux City 8.5 cents, from Omaha 11.5 cents, from Kansas City 15.5 cents, from Omaha to Kansas City 6 cents, from Omaha to Sioux City 3 cents.

duced the proportional from Minneapolis to Duluth to 5.5 cents. The revised proportionals herein are combinations on Minneapolis from Sioux City, Omaha, and Kansas City, but with a revised proportional from Minneapolis to Duluth of 4.5 cents.

We cannot grant the request of Duluth for a proportional rate from Kansas City not higher than the contemporaneous proportional from Omaha, applicable on shipments not only from beyond but also for beyond, made to equalize the Duluth and Chicago gateways to the East. The reason advanced for the proposal was the action of the carriers in the Part 7 revision, in applying the rate prescribed from Sioux City, Omaha, and Kansas City to Chicago also to Manitowoc, Wis., and the rate prescribed from Sioux City and Omaha to Chicago also to Green Bay, Wis., for distances ranging from 529 to 575 miles, compared with 613 miles from Kansas City to Duluth.

Omaha to Duluth Proportional

The present proportional rate from Omaha to Duluth is the same as from Omaha to Chicago. The Part 7 proportional from Omaha to Duluth was 2 cents higher than from Omaha to Chicago, and was the combination on Minneapolis. Omaha, Minneapolis, and Duluth contend that the rate from Omaha to Duluth should not be higher than from Omaha to Chicago, in order to maintain the present equalization of the Duluth and Chicago gateways to the East.

The Part 7 adjustment also made the proportional rate from Sioux City to Duluth 1 cent lower than from Sioux City to Chicago. Duluth urges that this did not compensate that market for the rate 2 cents higher to Duluth than to Chicago from Omaha, because Sioux City is a coarse-grain market, and Duluth is interested primarily in wheat, which can be procured in substantial quantities at Omaha. Duluth would prefer a parity of rates to that market and Chicago from Omaha to a rate lower to Duluth than to Chicago from Sioux City. Nevertheless Duluth suggests that the rate from Sioux City should be 3 cents less to Duluth than to Chicago, and that the proportional rate from both Sioux City and Omaha might well be combinations on Minneapolis, provided the proportional from Minneapolis to Duluth is made not to exceed 5 cents, although it denies any [fol. 368] real justification for the combination basis, inas-

much as the rate-making routes are not through Minneapolis.

The present parity of proportional rates from Omaha to Duluth and from Omaha to Chicago was required in Rates on Grain and Grain Products, 56 I. C. C. 133. Prior to that time the rate from Omaha to Duluth was 5 cents higher than the proportional rate from Omaha to Chicago, and was the combination on Minneapolis.

The proportional rate from Omaha to Duluth will be the combination on Minneapolis. The revised proportional rate of 4.5 cents from Minneapolis to Duluth will make the rate from Omaha to Duluth 1 cent, instead of the Part 7 2 cents, higher than from Omaha to Chicago.

Duluth-Superior Transit

The present adjustment permits transit at Duluth and Superior on shipments from or to either point. The Part 7 adjustment required the application of the proportional rates between these points, compared with transit balances of a common rate between Minneapolis and St. Paul, St. Joseph and Kansas City, and other points similarly situated. Duluth complains of this discrimination.

The difference in treatment resulted from the absence of proportionals between Minneapolis and St. Paul and the required cancelation of the proportionals between Kansas City and St. Joseph, which permitted the application of a transit balance between those respective dual markets in the absence of a higher proportional rate to be defeated.[43]

The complaint of Duluth is justified. The proportionals between Duluth and Superior will be canceled, and transit will be permitted under the conditions set forth at pages 517 and 523 of the supplemental report in connection with shipments under rate-break combinations through Minneapolis and St. Paul, and through St. Joseph and Kansas City, situations similar to that here presented.

Missouri River to Green Bay Proportional

Green Bay is a port on Green Bay served by the Green Bay & Western, extending east from Winona, Minn. It is one of the oldest lake ports, handles cargo grain only, and prior to 1916 operated one of the largest grain elevators on the lakes. In that year its elevator was destroyed. An

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[43] Supplemental report, pages 517 and 523.

elevator was constructed there in 1924, another in 1926, with a combined capacity of 1,500,000 bushels. The storage and harbor facilities at Green Bay are well adapted to the movement of grain over the lakes. Despite this, little or no grain has moved through Green Bay since the destruction of the [fol. 369] original elevator in 1916, due, it is alleged, to the lack of an appropriate rate adjustment, especially from the Missouri River.

From the Missouri River, Green Bay is reached by the Milwaukee and North Western direct, and by the Burlington and Chicago Great Western in connection with the Green Bay & Western beyond Winona. In June 1908 proportional rates from the Missouri River to Green Bay were established by the North Western on the same basis as to Chicago, Milwaukee, and Manitowoc, Lake Michigan ports south of Green Bay. In October 1909 similar rates were established by the Burlington in connection with the Green Bay & Western. The proportional rate was canceled in May 1911 by the North Western, and in July 1912 by the Burlington, from which dates, except during a part of the Part 7 adjustment period, the local rates have applied from the Missouri River to Green Bay, which are, generally speaking, 6 cents on wheat and 5 cents on coarse grains higher than the proportional rates from Omaha to Chicago, Milwaukee, and Manitowoc. After the rates became effective in the Part 7 revision, the carriers received permission to establish a proportional rate from Sioux City and Omaha to Green Bay on the same basis as to Chicago, Milwaukee, and Manitowoc, limited, however, to grain only, and transshipments from Green Bay by lake, and without transit. The rates to the East are the same from Green Bay as from Manitowoc, Milwaukee, and Chicago.

Kewaunee is an important Lake Michigan port, situated on only the Green Bay & Western, 36 miles east of Green Bay. It handles mostly package freight for transportation over the lakes by car ferry, and was the first car-ferry port on the Great Lakes. The rates to and from Kewaunee and Green Bay are the same.

Green Bay interests and the Green Bay & Western ask for the reestablishment of proportional rates from the Missouri River to Green Bay and Kewaunee on whatever basis is established from the Missouri River to Manitowoc, Milwaukee, and Chicago. From Omaha and Kansas City the distances to Manitowoc and Green Bay are about equal and

are more than a hundred miles greater than to Milwaukee and Chicago. To Kewaunee the distances are 36 miles greater than to Green Bay. The routes to Green Bay, Kewaunee, and Manitowoc from Sioux City and Omaha, through Minneapolis, are but little, if any, longer than the shortest available tariff routes. From Sioux City and Omaha to Buffalo and east the distances through Green Bay and Kewaunee are substantially the same as through Chicago. The Green Bay & Western urges that it is just as reasonable to disregard the additional mileage to Green Bay and Kewaunee over Chicago, Milwaukee, and Manitowoc from the Missouri River as it is to disregard the excess of more than a hundred miles to Milwaukee and Chi- [fol. 370] cago over Green Bay in making the same rate to Green Bay, Milwaukee, and Chicago from Minneapolis.

The record does not warrant an order prescribing the adjustment asked.

Minneapolis to Green Bay Proportional

In the Part 7 revision a proportional rate of 9 cents was prescribed from Kansas City to St. Louis, 276 miles. Minneapolis asks that, in the event of the represcription of this rate, the proportional rate from Minneapolis to Green Bay, Wis., should also be made 9 cents, for 288 miles, instead of being grouped at 12 cents, as it was in the Part 7 revision, with Kewaunee 325 miles, Manitowoc 315 miles, Milwaukee 334 miles, and Chicago 407 miles. The proportional rate of 9 cents from Kansas City to St. Louis is not represcribed herein. The record does not warrant the prescription of a proportional rate of 9 cents from Minneapolis to Green Bay.

Missouri River to Lake Michigan Ports Proportionals

Minneapolis suggests that the proportional rates from Missouri River markets (Sioux City to Kansas City, inclusive), to Lake Michigan and Green Bay ports (Chicago, Milwaukee, Manitowoc, Kewaunee, and Green Bay), through Minneapolis, might properly be made on one or the other of the following bases:

1. A blanket rate from all of the Missouri River markets to all of the lake ports 3 cents higher than the direct rate, with transit at Minneapolis.

2. To all ports the same as over the direct routes from Sioux City, 2 cents higher than over the direct routes from

Omaha, and 4 cents higher than over the direct routes from Kansas City, with transit at Minneapolis.

3. From Sioux City the same as over the direct routes to Manitowoc, Kewaunee, and Green Bay, 1 cent higher than over the direct routes to Milwaukee, and 2 cents higher than over the direct routes to Chicago; from Omaha the same as over the direct routes to Green Bay, and higher than over the direct routes by 1 cent to Kewaunee, 2 cents to Manitowoc and Milwaukee, and 3 cents to Chicago; and from Kansas City higher than over the direct routes by amounts ranging from 1 cent to Green Bay to 5 cents to Chicago.

Minneapolis suggests that these suggestions are reasonable by comparison with adjustments for similar out-of-line hauls shown of record.

A finding in accordance with the above proposals is not warranted.

[fol. 371] Minneapolis to Kansas City Proportional

The Part 7 revision made the proportional rate from Kansas City to Minneapolis 1.5 cents less than from Minneapolis to Kansas City. Minneapolis contends that this relation unduly prefers Kansas City in reaching intermediate territory in Minnesota, Iowa, and Missouri, and that the rate should be the same in both directions.

"It was pointed out in the original report that the rate from Minneapolis to Kansas City would be 18.5 cents if the relation of the Missouri River markets in the reverse direction were to govern, but that the rate of 17 cents therein prescribed from Minneapolis to St. Louis would be the maximum from Minneapolis to Kansas City; also that the movement from Minneapolis to the Missouri River markets was mainly of grain products, of lighter volume of movement and loading than grain, and might properly be charged a relatively higher basis than in the reverse direction of the predominant grain movement.

A proportional rate 3 cents higher than from Omaha to Minneapolis is herein prescribed from Minneapolis to Omaha. The revised proportional from Minneapolis to Kansas City will be the combination on Omaha.

Chicago to Kansas City Proportional

In the original report, proportional rates were prescribed from the Missouri River to Chicago, but not from Chicago

to the Missouri River. Chicago alleges an undue preference of Minneapolis in shipping to Oklahoma and Texas, during the Part 7 period, on combinations on Kansas City, using from Minneapolis to Kansas City the proportional rate of 17 cents prescribed in the supplemental report, as compared with the local rate of 24 cents from Chicago to Kansas City, which Chicago was required to pay in the absence of a proportional rate. During this period, however, Chicago had available a proportional rate of 12 cents to St. Louis, from which market the proportional rates to Texas were only 2 cents higher than from Kansas City. The proportional rate from Chicago to Kansas City, for a transportation service against the normal flow of the grain traffic, should be 3 cents higher than from Kansas City to Chicago.

Proportionals From Chicago to Minneapolis and Intermediate Territory

August 1, 1931, the effective date of the Part 7 order, proportional rates of 18 cents on wheat and 16 cents on coarse grains from Chicago to Minneapolis, which applied also as maxima at intermediate points in Wisconsin and [fol. 372] northern Michigan except for a proportional rate of 11.5 cents on animal and poultry feed to Wisconsin points south of the Green Bay & Western, were canceled, leaving Chicago to operate on the combinations of locals. September 22, 1931, proportional rates to the territory intermediate to Minneapolis were established on the basis of 7 cents for the first 100 miles and 1.5 cents for each additional 50 miles, instead of 5.5 cents for the first 100 miles and 1.5 cents for each additional 50 miles, as prescribed in the original report. February 20, 1932, with the cancelation of the Part 7 adjustment, the old basis was restored. Shortly thereafter some readjustment was made of these rates, but not on as favorable a basis as in the Part 7 revision. The proportional rate from Chicago to Minneapolis should be not to exceed 3 cents higher than in the reverse direction, and should be appropriately graded at intermediate stations.

Chicago Proportional Proposals

The present proportional rate from Omaha to St. Louis is the same as from Kansas City to St. Louis, and from Omaha to Chicago the same as from Kansas City to Chicago. The present proportional rate from Omaha and Kansas City to St. Louis is 4 cents less than from Omaha and Kansas

City to Chicago. Chicago contends that the rate from Kansas City should be 2 cents less than from Omaha to St. Louis, the rate from Kansas City to Chicago 0.5 cent less than from Omaha to Chicago, the rate from Kansas City to St. Louis 2.5 cents less than from Kansas City to Chicago, and the rate from Omaha to St. Louis 1 cent less than from Omaha to Chicago. These changes are proposed because of distances shorter by 138 miles from Kansas City to St. Louis than from Omaha to St. Louis, by 35 miles from Kansas City to Chicago than from Omaha to Chicago, by 176 miles from Kansas City to St. Louis than from Kansas City to Chicago, and by 73 miles from Omaha to St. Louis than from Omaha to Chicago; also by considerations of length of haul in each instance in Illinois, where transportation conditions are exceptionally favorable. A somewhat similar request is made by Kansas farm organizations, to which attention will now be directed.

Kansas Farm Organizations Proportionals Proposals

In the Part 7 revision, relative distances were observed in making the inbound flat rates to Kansas City, Omaha, and Minneapolis, but were to some extent disregarded in the prescription of the proportional rates from those markets to Chicago. The Kansas farm organizations suggest that this should be corrected by making the proportional rates from these markets to Chicago the differences between [fol. 373] the western trunk-line interior scale rates for the weighted-average distances to Chicago and to the other markets named, computed from origins in Kansas to and through Kansas City, from Nebraska to and through Omaha, and from Minnesota to and through Minneapolis. This would change the relations of the proportionals from these markets to Chicago and make the proportional from Kansas City to Chicago 1 cent less than from Omaha to Chicago, in lieu of the present parity of proportionals from these markets to Chicago, and make the proportional from Kansas City to Chicago 1 cent, and from Omaha to Chicago 2 cents, higher than from Minneapolis to Chicago, in lieu of the present rates from both Kansas City and Omaha to Chicago 4 cents higher than from Minneapolis to Chicago. The Part 7 adjustment made the rates from both Kansas City and Omaha to Chicago 3 cents higher than from Minneapolis to Chicago. The revision here requested is not

warranted. Nor is the similar revision proposed by Chicago justified.

Duluth to Peoria Proportional

The present proportional rates from Duluth are the same as from Minneapolis to Chicago and Peoria, which take the same rate. The Part 7 revision continued the parity of rates from Duluth and Minneapolis to Chicago, but made the rate from Duluth to Peoria by combination on Minneapolis. Duluth and Peoria complain of this change on the ground that the short route from Duluth is not through Minneapolis, 557 miles, but through Madison, Wis., 513 miles; and on the further ground that the rate from Duluth is a water-competitive rate, voluntarily established by the rail carriers to draw grain from the lake routes. Peoria also objects to this change because it made the rates from Duluth 5.5 cents higher than from Minneapolis through both Peoria and Chicago to the Ohio River gateways and to the East.

The finding in the original report is modified to make the proportional rate from Duluth to Peoria the same as from Minneapolis to Peoria. This finding disposes of the complaint of Duluth and Peoria against the disruption of the Peoria and Chicago gateways to St. Louis and Cairo resulting from the Part 7 change in the basis of rate from Duluth to Peoria.

Peoria to St. Louis Proportional

The Part 7 adjustment required cancelation of the proportional rate of 6 cents from Peoria to St. Louis, because the rule for the exclusive application of the rate-break combinations placed Peoria at a substantial disadvantage in competing with St. Louis in the Southeast in respect of grain originating in Iowa and at the Missouri River markets. [fol. 374] Later a proportional rate was established from Peoria to St. Louis, applicable only on grain received at Peoria by boat, and by rail from Illinois points from which there were no through rates. Peoria asks that proportional rates so restricted should be prescribed not only from Peoria to St. Louis, but also from Peoria to Chicago.

A proportional rate of 3 cents is herein prescribed from Peoria to St. Louis and Chicago, which is comparable with the voluntarily established and long maintained proportional rate of 3 cents from St. Louis to Cairo, for a comparable distance. The prescription of a proportional rate

from Peoria to St. Louis, applicable only on grain received from a boat line, is not warranted.

Peoria Equalization From Sioux City to the East

Under the present adjustment, as a part of the general Chicago-Peoria-St. Louis gateway equalization to the East, the proportional rate from Omaha and Kansas City to Peoria is 2 cents less than to Chicago, and the proportional rate from Peoria to the East 2 cents higher than from Chicago. The Part 7 revision did not disturb this equalization. From Sioux City to Peoria the proportional rate is the same as from Sioux City to Chicago, and as the rate from Peoria to the East is 2 cents higher than from Chicago the combination from Sioux City to the East is 2 cents higher on Peoria than on Chicago, and 2 cents higher than from Omaha and Kansas City. Peoria complains of this relation of the Chicago-Peoria gateway combinations from Sioux City.

The requested equalization of the Chicago and Peoria gateways from Sioux City to the East should be established.

Kansas City-St. Louis to Louisiana Proportionals

Under the present adjustment the proportional rates from Kansas City and St. Louis apply to Louisiana groups 1, 2, and 3, each group extending from east to west across the State respectively in northern, central, and southern Louisiana, resulting in a parity of rates in eastern and western Louisiana in each group. Rates to group 2 are uniformly 2.5 cents less than to group 3, and rates to group 1 uniformly 2.5 cents less than to group 2. The Part 7 revision divided these three groups into six groups, with a rate difference in each group to points on and east of the line of the Rock Island from Randolph south through Ruston, Alexandria, and Eunice (hereinafter called the Ruston line), on the one hand and to points west of that line, on the other. Group 3 will be referred to as typical.[44]

[fol. 375] There was approval and disapproval of the foregoing change in Louisiana grouping.

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[44] Present rate to group 3 from Kansas City and St. Louis 37 cents. Part 7 rate to group 3 on and east of the Ruston line from Kansas City 26 cents, from St. Louis 19 cents; to group 3 west of the Ruston lines from Kansas City and St. Louis 23 cents. Proportionals from Omaha 16 cents to Kansas City and 13 cents to St. Louis.

Under the present adjustment from Omaha to Louisiana, group 3, the proportional rate permits transit at Cairo, and through rates from Illinois to group 3 in some instances are made by combinations of the flat rates to Cairo and the transit balance of the proportional from Omaha. The Part 7 revision made the rate from Omaha to Louisiana group 3 east by combination on Kansas City and Cairo, and to Louisiana group 3 west by combination on Kansas City. This resulted in a rate from Omaha to group 3 points west of the Ruston line 7 cents higher through Cairo than through Kansas City.

Cairo asks for the prescription of a proportional rate from Cairo to Louisiana on and east of the lines of the Rock Island south to Winfield, the Louisiana & Arkansas thence to Alexandria, and the Missouri Pacific thence to Lake Charles, equal to the transit balance from Cairo of the proportional rate from Omaha, the proportional thus made to be increased 1 cent to Louisiana destinations west of the lines described, and to be further slightly increased to destinations in Texas; also for the continuation of transit on the proportional rate from Omaha. This adjustment would continue the equalization of rates from Omaha through Cairo to Louisiana points on the Ruston line, widen the equalization territory from Alexandria to Lake Charles, and reduce the Part 7 disadvantage of Cairo in western Louisiana from 7 cents to 1 cent, and in Texas to 2 cents.

The adjustment requested by Cairo is said to be necessary to the movement of Illinois and Iowa grain through Cairo to this southwestern territory in competition with grain from Omaha. It would result in a combination on Cairo from these States to eastern Louisiana on an equality with the proportional rate from Omaha, and in proportional rates slightly higher than the balances of the Omaha proportionals to western Louisiana and Texas, unless transit is granted on the Omaha proportionals, as requested.

The contention of Cairo is that the value of corn is higher at Cairo than at Omaha by the amount of the freight rate from Omaha to Cairo, and that corn can move from Illinois and Iowa, through Cairo in competition with corn from Omaha only at outbound rates lower by this price difference than from Omaha. The record indicates, however, that corn values in Illinois and Iowa are set by the Chicago market, and that Cairo must at least meet the Chicago price in the purchase of Illinois and Iowa corn. To most of Louisiana

the routes through Cairo from Omaha are longer than over direct routes from Omaha. To make rates from Illinois and Iowa by the use beyond Cairo of the transit balances of the direct rates from Omaha, over the indirect routes through [fol. 376] Cairo, would result in relatively lower through rates from Illinois and Iowa than from the States farther west over the direct routes.

The Part 7 revision made the proportional rate from St. Louis the same as from Kansas City to Louisiana group 3 west of the Ruston line, but made the proportional from St. Louis 4 cents less than from Kansas City to points on and east of that line. From Omaha the result was to make the combination on St. Louis the same as the direct rate from Omaha, which was also the combination on Kansas City, to points on and east of the Ruston line, and to make the combination on St. Louis 7 cents higher than the direct rate from Omaha, which was also the combination on Kansas City, to points west thereof. The 7 cents represents the difference between the proportional rates from Omaha to Kansas City and from Omaha to St. Louis. St. Louis approves of the Part 7 revision on and east of the Ruston line, but opposes it west thereof.

In Louisiana the Part 7 revision also made the rate from Kansas City 3 cents less west of the Ruston line than east thereof. Milling and feed interests at Shreveport object to the rate from St. Louis 4 cents higher west than east of the line mentioned. Under the present adjustment, Shreveport transits to any part of Louisiana in the respective groups. The six groups resulting from the Ruston line were designated groups 1, 2, and 3 east and west respectively. Shreveport is situated in northwestern Louisiana, in the Part 7 group 1 west. The Part 7 rate from St. Louis through Shreveport was higher than from St. Louis direct by 4 cents to group 1 east and by 1.5 cents to group 2 east. Shreveport was therefore unable, by reason of the prohibitions of the fourth section, to transit from St. Louis, in competition with direct shippers from St. Louis, to groups 1 and 2 east. Shreveport was also at a disadvantage, it is stated, in competing in Louisiana with shippers from Little Rock, Ark., Sikeston, Mo., and other Arkansas and Missouri points.

Eastern Louisiana is particularly important to Shreveport dealers, because approximately 65 per cent of the population of the State is there, and consumes about 50 per cent

of Shreveport's shipments. Shreveport's shipments are mainly of corn, but also include other grains, flour, and feeds. The inbound shipments are in carloads, and 90 per cent of the outbound shipments in mixed carloads, due to shipments to small dealers requiring mixed carloads of assortments in small lots, inability to store these products for long periods under existing climatic conditions, difficulty in financing stocks, etc. The Kansas City Southern and Missouri Pacific route through Shreveport from St. Louis to eastern Louisiana, and transit at Shreveport on that traffic is said also by these carriers to be a necessity. A modification of the Part 7 finding, by retention of the present group-[fol. 377] ing of western and eastern Louisiana at one rate, is accordingly requested by Shreveport.

The finding in the original report is modified by the elimination of the Ruston line. This disposes of the contentions of St. Louis and Shreveport. The request of Cairo for proportional rates to Louisiana on and east of the lines described, and rates related thereto to western Louisiana and to Texas, equal to the transit balances of the proportional rates from Omaha, is denied.

Adjustments Other Than Rate-break Combinations

Various other adjustments and practices throughout different parts of the western district, not primarily connected with the rate-break combinat' ons, require separate consideration.

Minneapolis to Buffalo

Minneapolis alleges an undue preference of Buffalo in the spreads between (1) the rail rates and the rail-lake-and-rail rates through Buffalo from Minneapolis to the East, and (2) the rail rates from Minneapolis and Buffalo to the East. In 1917 the spread between the all-rail domestic proportional rate and the rail-lake-and-rail rate via Buffalo from Minneapolis to New York, on domestic shipments, was 7.23 cents. The present spread is 16.5 cents. The increased difference has been mainly in the rail part of the haul. In 1917 the spread between the rail rates on flour from Minneapolis and Buffalo to New York was 14.2 cents. The present spread is 22 cents. A return to the pre-war spreads is said by Minneapolis to be necessary to the preservation of the milling industry at that point.

In its complaint in No. 18616, heard and argued separately but consolidated with this proceeding, Minneapolis seeks to reduce its disadvantage from Montana points on the Milwaukee by transiting at Minneapolis on the rate to Duluth, which is the same as the rate to Minneapolis on shipments not stopped at Minneapolis, and the combination on Minneapolis (using the proportional rate of 6.5 cents beyond Minneapolis) on shipments stopped at Minneapolis. This request is opposed by Minnesota mills south of Minneapolis, which buy their wheat largely on the Minneapolis market and now ship their flour to the East through Chicago and Milwaukee on a competitive basis with the Minneapolis mills shipping through Duluth. These mills show that from Minneapolis and western points basing thereon to the East the routes through their milling points are as short as, or shorter than, the routes from the same origins through Duluth, and they contend that no change should be made in the present adjustment until the through rates to the East are before us.

[fol. 378] The national annual consumption of flour is 108,000,000 barrels, 52,000,000 barrels of it in the Central, Middle Atlantic, and New England States, and 33,000,000 of the latter in the States east of the Buffalo-Pittsburgh line. The rail rates from Buffalo are lower than from Minneapolis to destinations east of the Buffalo-Pittsburgh line, and are not higher, and in many instances are lower, than from Minneapolis to destinations west of that line. When to these rates from Buffalo are added the low lake costs of transporting northwestern wheat from Duluth to Buffalo the advantage of the Buffalo miller over the Minneapolis miller in the milling of wheat from the great northwestern producing areas, for distribution in the most important consuming territory in the country, is apparent.

The adjustment complained of is said to have diverted wheat from the Minneapolis gateway to the cheaper rail-and-lake routes through Duluth to Buffalo, one of the country's largest flour-milling centers. During the 15-year period from 1916 to 1930 the flour output at Minneapolis declined 7,745,000 in barrels and the Buffalo output increased 5,147,000 in barrels. In 1919 the flour output of Minneapolis was 17,500,890 barrels, compared with 7,227,187 barrels in 1932, a loss in barrels equivalent to 41,687 carloads. During the same period there was a decline of 43,053 carloads of wheat.

The domestic rates from Minneapolis to the territory east of Chicago, rail and rail-lake-and-rail, are not within the scope of this proceeding; nor are the through rates from the grain fields to the East in issue. Some relief to Minneapolis is afforded in the revision herein made in the proportional rate from Minneapolis to Duluth.

Minneapolis to the East Through Lake Michigan Versus Lake Superior Ports

The International Milling Company and the Southern Minnesota Mills, operating mills in Minnesota south of Minneapolis, are particularly interested in the relation of rates from Minneapolis to the East through the Lake Michigan and Lake Superior gateways. They purchase their wheat largely in Minneapolis and transit on the proportional rate from Minneapolis to Chicago and Milwaukee, their lake gateways to the East. On flour to New York the lake-and-rail rates are 27.5 cents from Chicago and Milwaukee and 33 cents from Duluth. From Minneapolis the present proportional rates are 13 cents to Chicago and Milwaukee and 6.5 cents to Duluth. From Minneapolis to New York the through rail-lake-rail rate is therefore 1 cent higher through Chicago and Milwaukee than through Duluth. The mills in southern Minnesota desire an equalization of the routes through Chicago and Milwaukee with the route through Duluth, but urge that in no event should the [fol. 379] difference in favor of the Duluth route be more than the present 1 cent. That difference in rate represents 2 cents a barrel, an important item, especially in the eastern territory, the most important flour market in the United States. These mills propose that the proportional rate from Minneapolis to Duluth be made on the basis of 50 per cent of the contemporaneous proportional rate from Minneapolis to Chicago, the present relation. They oppose the request of Duluth and South Dakota for a reduction in the proportional rate from Minneapolis to Duluth unless such a contemporaneous reduction is made in the proportional rate from Minneapolis to Chicago and Milwaukee as will not increase their present disadvantage of 1 cent in shipping through those ports.

The proportional rate from Minneapolis to Duluth is herein reduced from 6.5 cents to 4.5 cents, in order to make through rates to Duluth, basing on Minneapolis, on a reasonable maximum level. The lake-rail rates beyond the

respective lake ports are not in issue in this proceeding. The lake-rail carriers should make such readjustments as will place the mills in southern Minnesota on a reasonable competitive basis with Minneapolis and other mills shipping through Duluth.

Chicago versus Milwaukee Transit

Chicago complains of an undue preference of Milwaukee in the matter of transit, alleging that Milwaukee has transit at the direct rates from the South, West, and North, compared with the combinations on Chicago in similar circumstances. For example, corn from Tama, Iowa, can be transited at Milwaukee and reforwarded to Madison, Wis., at a rate of 9 cents less than a similar shipment from Tama transited at Chicago, although the distance via Milwaukee is 20 miles greater than via Chicago. From Oglesby, Ill., the rate via Milwaukee to Madison is 5.5 cents less via Milwaukee than via Chicago, for distances in excess of the short route by 111 miles through Milwaukee and 133 miles through Chicago. From the Missouri River over the Milwaukee transit is permitted at Milwaukee on the proportional rate to Chicago, but not at Chicago on the proprotional rate to Milwaukee. From the Missouri River also the rate to Chicago proper through Minneapolis is the proportional rate to Minneapolis plus an arbitrary of 11 cents, 2 cents less than the proportional from Minneapolis to Chicago, but from the same origin to Milwaukee via Chicago the rate is much higher for a shorter haul. From the Missouri River, Iowa, the Dakotas, and other western points to points beyond Chicago in Illinois and Iowa transit is permitted not only at Milwaukee but also at Cedar Rapids, Clinton, and Davenport, Iowa, Decatur and Springfield, Ill., and other intermediate points, but not at Chicago. The [fol. 380] Illinois lines publish numerous through rates to Milwaukee and points beyond, via Chicago, in some instances lower, and in others slightly higher, than to Chicago. In some instances the rates are lower on grain products than on grain, but in no instance is Chicago permitted to transit on the rate to Milwaukee.

Milwaukee suggests that any undue prejudice to Chicago in the way of transit should be corrected by extending to Chicago transit arrangements comparable to those given to Milwaukee rather than by canceling existing transit at Milwaukee.

The record warrants a finding of undue prejudice to Chicago and undue preference of Milwaukee in the matter of transit, which should be corrected by a general overhauling of the transit tariffs. The rate on grain products should in no instance exceed the rate on grain.

Grand Forks

On shipments from main- and branch-line points on the Great Northern west of Surrey, N. Dak., to Minneapolis out-of-line charges in addition to the direct rates are made on shipments routed through Grand Forks instead of through Fargo, a more direct route.

Grand Forks will be given the benefit of the direct rates to Minneapolis, St. Paul, Minnesota Transfer, Duluth, Superior, and points beyond and directly intermediate on shipments stopped in transit at Grand Forks when originating west of that point on the main line of the Great Northern west to Fort Buford in North Dakota, including all points on branch lines north thereof, and on branch lines south thereof as far as Hillsboro, Portland, and Pekin, inclusive; also from points on the Great Northern's Watford City branch, and on main and branch lines of that carrier in Montana, Idaho, Oregon, and Washington.

Central Missouri Millers

Mills at Slater, Boonville, Sedalia, Jefferson City, New Haven, Carrollton, Hermann, and Marshall, in central Missouri, directly intermediate between Kansas City and St. Louis, want the original findings so modified as to (a) make the local rates from these mills the same amounts under the local rates from Kansas City on shipments to Chicago rate points in Illinois and Wisconsin as on shipments to Chicago, (b) make the interior scales from these mills to destinations in Iowa and Minnesota applicable over joint as well as single-line routes, (c) make rates from Boonville to Texas not higher than from Kansas City to Texas, and (d) make applicable, through these mills and St. Louis with transit, the direct-route proportionals from Kansas City to Memphis, Arkansas, southern Missouri, and Louisiana, in lieu of the higher rate-break combinations on St. Louis. [fol. 381] These mills are located on main trunk lines between Kansas City and St. Louis, and the only available routes on shipments from Kansas City through these milling points to the destinations in question are also through

St. Louis. The Part 7 proportional rate from Kansas City to Memphis was 16 cents over direct routes and 18 cents through St. Louis, the latter the rate-break combination on St. Louis. Over the Missouri Pacific the 16-cent rate applied with transit at Coffeyville, Kans., on a route not through St. Louis 659 miles, and also through Sedalia and St. Louis on continuous shipments 602 miles, but the St. Louis combination of 18 cents was applicable on shipments stopped in transit at Sedalia or St. Louis. The miller at Sedalia contends that this adjustment subjected him to undue prejudice, and gave to his Coffeyville competitor, for a greater service, an undue advantage; that he is not interested in the rate-break combination on St. Louis, that the proportional adjustment through St. Louis would not be disrupted by transit at Sedalia on the direct rate from Kansas City to Memphis, and that such transit should be granted.

The original findings and order, properly construed, would have made the flat rates from these mills the same amount under the flat rates from Kansas City on shipments to Chicago rate points in Illinois and Wisconsin as on shipments to Chicago. The rates herein prescribed or established by the carriers will bear that relation.

The Part 7 interior scales, not herein prescribed, were for both single-line and joint-line hauls.

The key-rate from Boonville will be eliminated. This will permit the carriers properly to relate the rate from Boonville to Texas with the rate from Kansas City to Texas.

Transit over rate-break combination routes has been discussed elsewhere herein. The rate-break combination has been found reasonable for shipments from Kansas City to Memphis through St. Louis, and transit at intermediate points on that route should be on the basis of that charge.

Southwest Missouri Millers

The Southwest Missouri Millers are located at Aurora, Carthage, Neosho, and Springfield, Mo., south and east of Kansas City, on routes to Memphis, Arkansas, Louisiana, and eastern Texas, the principal markets, with nearby Missouri, for their soft-wheat flour. They request a prescription of the general plan of the original adjustment, but with more specification as to rate relations, more regard for geographic locations, and the fullest consideration of dis-

[fol. 382] tance consistent with reasonable grouping. They specifically advocate the exclusive application of proportional rates from price-registering markets.

Rates from and through southwest Missouri milling points are now higher relatively than from Oklahoma and Texas to Memphis, Arkansas, Louisiana, and eastern Texas. The Part 7 revision reduced, but did not completely remove, the preference in favor of Oklahoma and Texas. For example, to Paris, Tex., the present rate is 10 cents higher from Aurora, Mo., than from Enid, Okla., for equal distances. The Part 7 rate established by the carriers made the difference 4 cents. Similar preferences of Oklahoma, Texas, and Illinois to Arkansas and Louisiana are shown. The preferences of Oklahoma are due to the reduced rates from Oklahoma resulting from the 12244, 13406, and 15026 scales hereinbefore described.

The Southwest Missouri Millers also frequently buy grain at Kansas City for shipment to their mills and reshipment of the milled products to Arkansas and Louisiana at flat or local rates. These local shipments compete with local shipments from Kansas City to the same destinations. During the Part 7 period the combinations of proportional rates from Kansas City to southwest Missouri mill points on grain and the outbound local rates to the Southwest on the products resulted in higher charges than the local or nontransit rates from Kansas City to the same destinations. These millers request the prescription of a common scale for application as local rates from Kansas City and their mills, the difference between the flat rates so made to be the proportional rates from Kansas City to their mills.

The rates herein prescribed will remove any undue preference of shippers from Oklahoma and Texas. The request for proportional rates from Kansas City to the southwest Missouri mills, on the basis above described, is denied. Such an adjustment, even if otherwise warranted, could not be confined to this situation, and if prescribed generally could lead only to confusion and inconsistencies in general rate relations.

Southwestern Millers' League

The Southwestern Millers' League, composed of flour millers in Kansas, Missouri, Nebraska, Colorado, Oklahoma, and Texas, requests equal rates on wheat and flour,

with reasonable transit privileges, throughout the western district; a reasonable relation of rates from their shipping points and from competing northwestern shipping points to Chicago and other gateways; equal rates on self-rising, phosphated, and plain flours; absorption of cross-town switching charges; and cancelation of the so-called 3-way [fol. 383] rule. An equality of rate on wheat and flour, and reasonable transit provisions, have already been prescribed herein. The other proposals will be considered in the above order.

Relation of Rates from Northwestern and Southwestern Mills to Chicago

Typical southwestern milling points are the Missouri River markets, Omaha to Kansas City, inclusive. A typical northwestern milling point is Minneapolis. The southwestern millers are interested mainly in reaching, in competition with the northwestern millers, the important flour markets in central and trunk-line territories. To these territories rates from the Northwest are combinations on Minneapolis and Chicago, and from the Southwest combinations on the Missouri River, Chicago, and St. Louis. Rates from Duluth are the same as from Minneapolis to Chicago. From both Minneapolis and Duluth, rates to Chicago also apply to Peoria, Milwaukee, Manitowoc, Green Bay, Kewaunee, Mackinaw City, and Manistique. Rates from the Missouri River to Chicago are likewise applied to Milwaukee and Manitowoc, and are equalized through Peoria and St. Louis.

On July 17, 1905, the proportional rate to Chicago was 1.5 cents higher from the Missouri River than from Minneapolis. For several years prior to June 25, 1918, the difference was 2 cents. As a result of the general percentage increase on the latter date, and of general percentage revisions on subsequent dates, the rate from the Missouri River markets is now 4.5 cents higher than from Minneapolis. The Part 7 adjustment reduced the difference in favor of Minneapolis to 3 cents.

The southwestern millers contend that the rates from Minneapolis and Kansas City might well be equalized, and that in no event should the difference in favor of Minneapolis exceed 1 cent. They submit testimony and data purporting to show that the average short-line distance is only 27 miles greater from the Missouri River markets than from

Minneapolis; that a constructive distance of more than 100 miles should be added to the short-line distance from Minneapolis, on account of extensive transit at interior points; that transportation conditions are slightly better from the Missouri River than from Minneapolis; that while the values of northwestern and southwestern bakery flours are about the same the northwestern family flours command a premium of from 50 cents to $1 per barrel over southwestern family flours; and that milling costs are higher in the Southwest than in the Northwest. They also contend that the reduced volume of grain tonnage moved over the lakes from [fol. 384] Duluth to Chicago during recent years refutes the claim of the Northwest millers that the rail rates from Minneapolis and Duluth to Chicago are depressed because of lake competition.

The direct rates from the Missouri River markets to Chicago are also applicable over circuitous routes through interior milling points, and the Missouri River basis applies from Sioux City as well as from Kansas City and Omaha, and to Milwaukee and Manitowoc as well as to Chicago, for greater distances than those shown in the southwestern millers' exhibits. While the southwestern millers do not seek equalization of Chicago with any gateway north of Chicago, other shippers from Missouri River markets do seek such equalization, as do the carriers serving those gateways. Furthermore, if the distances to the nearest gateway are to control the rates from the Missouri River, the same standard must also control from Minneapolis and Duluth. From those points the distances to Green Bay, Kewaunee, Manitowoc, and Milwaukee are almost 100 miles less than to Chicago.

The present volume of movement of lake grain from Duluth to Chicago, while less than when the rail proportionals from Minneapolis and Duluth to Chicago were first established, continues to be a potential influence with the rail carriers. The southwestern millers themselves concede that the proportional rate from Minneapolis-Duluth to Chicago probably could not be increased to say, 20 cents without driving the traffic to the lakes.

The difference of 3 cents resulting from the prescription herein of proportional rates to Chicago of 12 cents from Minneapolis and 15 cents from the Missouri River markets will be reasonable for the future.

Prepared Flours

In the supplemental report (page 531) phosphate flour is described as plain flour containing not more than one half of 1 per cent of phosphate, and self-rising flour is described as plain flour containing an average of not more than approximately 5 per cent of phosphate, salt, and soda. The prescription of the same rate on self-rising flour as on plain flour in Aunt Jemima Mills Co. v. Director General, 83 I. C. C. 549, is there referred to. It is also there shown that transit is permitted on the basis of the grain-products rate on the entire weight of the shipment when the content of the commodities other than flour is not to exceed 5 per cent, and that transit is permitted on the same basis on the weight of the plain flour when the content of the commodities other than flour is in excess of 5 per cent and not in excess of 20 per cent, the flour rate for the movement from the transit point to be applied on the nontransit commodities. The [fol. 385] record was found to be insufficient to warrant a finding in revision of the prevailing transit practices. The reopened record shows that tariffs generally throughout the western district provide for transit on the grain ingredients of self-rising and prepared flours, and on nongrain ingredients when not in excess of one half of 1 per cent of the weight of the blended commodities, the excess over one half of 1 per cent of the nontransit ingredients to be charged the flat rate on flour from the transit point.

The reopened record further shows that in the western district generally the rate on wheat flour will apply on grain flour, or on blends of grain flour with cereal flour, with or without chemical constituents or other ingredients, not including fruit or vegetable flours, provided the chemical constituents or ingredients other than grain do not exceed 20 per cent of the total weight of the blended product.

In purported compliance with the Part 7 revision, the carriers in the western district, except the transcontinental lines, continued the parity of rates on plain and prepared flours, but changed from 20 per cent to 12 per cent the content of chemical constituents or ingredients other than grain. The transcontinental carriers published the prescribed rates on plain flours but not on prepared flours.

The reopened record affords no basis for a finding as to transit on prepared flours other than that reached in the

original report, or for a finding requiring a change in the present relation of rates on plain and prepared flours.

Absorption of Cross-Town Switching Charges

There is no present uniformity in respect of the absorption of cross-town switching charges, that is, charges for moving from one location to another, in a given locality, shipments that have come to rest, as differentiated from the carriers' reciprocal switching on line-haul movements. Cross-town switching charges are now absorbed at Kansas City, Omaha, St. Louis, and interior points in Kansas, Oklahoma, and Texas, but not at Chicago and certain other points. In Texas the shippers have the option of treating the switching movement as a transit movement, by surrendering an inbound expense bill to cover the switching service, as in the case of any other transit shipment, or of retaining the inbound expense bill and paying for the switching service. Similar arrangements do not apply elsewhere.

Although no proposals for canceling cross-town switching absorptions were made during the hearings, and no finding was made to that effect, all such arrangements were canceled in the Part 7 tariffs effective August 1, 1931. Shippers affected thereby ask that in the reopened proceeding the retention of present absorption practices be required. [fol. 386] If continued elsewhere, Chicago and other markets ask similar absorption to avoid discrimination. For example, grain from Kansas can now be unloaded into an elevator at Kansas City, at the rate to Kansas City, later shipped across town to a mill in Kansas City, and the product subsequently reshipped to any point beyond Chicago, at the through rate via Kansas City, but on the same grain transited at Chicago a charge is made for the transfer from the elevator to the mill. If, in removal of the discrimination alleged by Chicago, the absorption should be canceled at Kansas City, the Kansas City combination would still be available on a shipment milled at Topeka, Kans., but the cross-town switching charge would be added to the Kansas City combination on a shipment milled at Kansas City from grain moving from the same interior Kansas origin, over the same route, to the same final destination beyond Kansas City. At present Topeka has that advantage on local shipments to Kansas City, on which the cross-town switching charge is not absorbed.

In Southwestern Milling Co. v. Chicago, R. I. & P. Ry. Co., 148 I. C. C. 145, 161 I. C. C. 295, a similar situation was found unduly prejudicial to Kansas City, Kans., but that finding has not been reflected in other adjustments. If applied generally, it would have meant either universal transit from one location to another at all destinations in the western district, similar to the present transit in Texas, or abandonment of all transit.

Shippers in Texas see nothing unreasonable in transit practices which permit, for example, the inbound movement of grain to an elevator on one line in Fort Worth, and its later transit movement across town to another carrier, for further movement to Dallas, 40 miles beyond Fort Worth, at the rate to Fort Worth, with absorption of switching charges at both Fort Worth and Dallas. They contend that to grant transit at Fort Worth on shipments to Dallas, and to deny transit on the less costly service from an elevator to a mill across town at Fort Worth, would be both unreasonable and unduly prejudicial.

The question here presented is a difficult one, which cannot be adjusted at this time, as the situation is only partially developed on this record. Any order entered herein would have nation-wide effect. The present record does not warrant an order requiring the substitution of transit for what seems to be a strictly local switching service. Nor does it warrant an order, designed to remove an apparent discrimination against Chicago, that would present the alternative of creating a new discrimination against Kansas City in favor of Topeka or of canceling transit entirely. No affirmative finding in respect of this general situation will therefore be made in this proceeding. [fol. 387] Any change in present practices should be presented in the usual form of proposed tariffs, subject to protest and suspension upon proper cause shown, rather than under the purported authority of findings in this proceeding.

Three-Way Rule

The 3-way rule is applicable only on shipments stopped in transit. It provides in substance that on transited shipments the through rate to final destination will be the highest of the three rates, namely, from origin to destination, origin to transit point, or transit point to destination. The rule, while generally observed throughout the western district, is complained of principally in the Southwest. In

that territory it is sometimes departed from by individual carriers for competitive reasons. The Santa Fe not only applies the rule over circuitous routes, but also makes an additional charge for the out-of-line service over those routes. Shippers contend that this amounts to a double penalty which is not justified.

Whether the 3-way rule was originally established as a penalty for out-of-line service or to prevent breaking down the rate structure is not clear. It serves both purposes in that it is usually encountered on routes over which fourth-section relief has been obtained. If, for example, a shipment from a more distant and lower-rated point is stopped in transit at an intermediate but higher-rated point on a circuitous route, the transit operator at the higher-rated point could, by switching billing, always move his local shipments from the higher-rated point at the balance of the through rate from the more distant point unless restricted by the 3-way rule. The application of the higher rate from the intermediate point therefore not only protects the rate structure but also compensates the carrier to some extent for the extra service performed. It also guarantees the carrier against refunding any of its revenue to the transit point when the through rate is less than the rate to the transit point. The contention that the application of the 3-way rule to a transited shipment is inconsistent with a grant of fourth-section relief, because a transited shipment is a through movement, is not convincing. Such a shipment is a fictional through movement, but the fiction cannot change the fact that there is a separate movement to and from the transit point, compared with the one movement, and no opportunity for cutting the rate, on a through billed shipment. In Transit on Grain and its Products, 155 I. C. C. 666, increases in rates to become effective under the 3-way rule were found not justified, but the inherent justice of such a rule was recognized. The rule seems to be a necessary and reasonable transit requirement and will not be condemned in this proceeding.

[fol. 388] Interior Kansas Adjustments

From southwestern Kansas to southwestern Missouri the present rates are on the so-called higher Missouri River basis, that is, the rate from origin to Kansas City, or from destination to Kansas City, whichever is higher, will govern.

In the original report (pages 673-674), the proposal of

the carriers to revise these rates in I. and S. Docket No. 3278 was found not justified, without prejudice to the filing of schedules based on the interior scale rates for average distances. This is said to have resulted in different rates from points in the same Kansas origin group. Interior Kansas shippers now suggest that the rates be made 112 per cent of the prescribed rates to Kansas City from the 19-cent Kansas group, to correspond with relative distance percentages from that group, and that the present relations obtain from other Kansas groups. The resulting adjustment would make the through rates by combination on Kansas City except for short hauls, and would be an improvement over the Part 7 adjustment in the relation of the interstate and intrastate rates at Kansas border points. The proposals of the carriers in I. and S. 3278 are approved, subject to rates 90 per cent of the revised southwestern scale, for average distances between groups, as maxima. The finding in the original report is modified accordingly.

This finding will also dispose of situations presented in respect of rates, during the Part 7 period, from Kansas to points on the Kansas City Southern between Kansas City and Joplin, Mo., where, for example, from Salina, Kans., to Pittsburg, Kans., over the joint route of the Union Pacific and Kansas City Southern, through Kansas City, the combinations on Kansas City exceeded the rates over a single-line route not through Kansas City; and in respect also of a rate during that period from Salina to Parsons, Kans., over a joint route through Kansas City, 8.5 cents higher than the rate over a single-line route from Salina to Coffeyville.

Other criticisms of the Part 7 revision on the part of interior Kansas shippers relate to the action of the carriers in making interior rates from Kansas to Oklahoma higher than from Oklahoma to Kansas; failure of the Rock Island to apply rates from points on its line in eastern Oklahoma to points in Oklahoma and Texas on its Liberal-Dalhart line over the short route through Liberal, Kans.; and long-haul routing provisions in connection with shipments given transit at interior points on the Santa Fe.

The southwestern scale, discussed elsewhere herein, should not be exceeded between interior points in Kansas and interior points in Oklahoma, and, except where neces- [fol. 389] sary properly to grade into the prescribed rate-

break combinations, should be applied between Kansas and Oklahoma in both directions.

The Rock Island is not justified in charging higher rates over its short route through Liberal than over its long route through Dalhart.

Under the long-haul routing provision of the Santa Fe on a shipment, for example, from Dodge City, Kans., to Chicago, milled at Hutchinson, Kans., the basis of charge is the rate-break combination on Kansas City, if routed from Hutchinson to Chicago over the Santa Fe, and is the higher combination on Hutchinson if routed beyond Kansas City over a line other than the Santa Fe. On a local shipment from Hutchinson to Chicago over the Santa Fe to Kansas City and any line beyond, or on a shipment of grain through Hutchinson and Kansas City, milled at Kansas City, the basis of charge is the combination on Kansas City. Fourth-section departures also result from the application of this rule. For example, on a shipment of grain from Syracuse, Kans., to Shreveport, La., milled in transit at Hutchinson, routed over the Santa Fe through Hutchinson to Kansas City and the Kansas City Southern beyond, the rate is 62.5 cents, but on a shipment from Syracuse to Frierson, La., beyond Shreveport, over the same route, the rate is 52 cents.

The rate-break combinations on Kansas City herein prescribed from west of the Missouri River to Chicago are prescribed as reasonable through rates for application over all lines publishing the components of the combinations. The rule of the Santa Fe in effect would arbitrarily nullify the application of those rates, and is herein found unreasonable.

Missouri Groups to Memphis

Memphis desires a continuation of the present southeastern Missouri group and the North Cape group, both in southeastern Missouri. The southeastern group is the larger and more important group. Both groups produce coarse grains almost exclusively. The rail rates to Memphis are 14.5 cents from the southeastern group and 17 cents from the North Cape group, but most of the shipments move by truck. The Part 7 adjustment broke up the groups, and made the rates according to distance, and resulted in both increases and reductions. The proposal is for rates of 15 cents from the southeastern Missouri group and 18 cents from the North Cape group. These rates closely approximate the averages of the Part 7 rates. If the groups are to be again disrupted,

the proposal is for rates 1 cent less than the Part 7 rates, although doubt is expressed as to the sufficiency of this reduction to take the traffic away from the trucks.

[fol. 390] The finding in the original report is modified to the extent of requiring continuance of the present groups at the averages of the prescribed rates from each group.

Rates to Arkansas

To Little Rock the revised southwestern scale will be observed from Oklahoma and Texas, with key-point rates to Memphis as maxima. From Kansas on and north of the Santa Fe's line through Hutchinson and Kinsley, the rates to Little Rock will be combinations on Kansas City. From points in Kansas south of that line the rates should be scaled down from the Kansas City combinations into the prescribed adjustment from Oklahoma. Rates to Helena will be 2 cents higher than to Memphis from all of Kansas; also from Oklahoma and Texas north of the Choctaw line of the Rock Island; and the same as to Memphis from Oklahoma and Texas on and south of that line. From St. Louis to Helena and Pine Bluff the rates will be the same as prescribed herein to Little Rock. To Texarkana the rates will be the same as to Louisiana group 1 from all origins. To Pine Bluff the Little Rock basis will apply from all origins.

Local Rates From Cairo, Ill., to Memphis and the Southwest

In the Part 7 revision, because of the effect of the level of the proportional rates from Cairo to the Mississippi Valley and the Southwest on the local rates from Cairo and intermediate stations to the same destinations, the carriers made the local rates from Cairo to these destinations by adding as much as 14 cents to the proportional rates from Cairo. This resulted in a local rate to New Orleans, for example, on the same basis from Cairo as from central Illinois, about 300 miles north of Cairo. Cairo requests that its local rates be made not to exceed the combinations of the outbound proportional rates from that gateway and the lowest inbound local rates. Local rates from Cairo should be reasonably graded under the rates from central Illinois.

Relation of Memphis and Helena

Memphis contends that the rates to that market should be 3 cents lower than to Helena, Ark., from all origins except

Oklahoma and Texas, and the same as to Helena from Oklahoma and Texas.

Helena is 66 miles south of Memphis and is the eastern terminus of the Missouri & North Arkansas. It is also on branch lines of the Missouri Pacific and Yazoo & Mississippi Valley and requires car-ferry service across the Mississippi River for delivery on the latter line. The present [fol. 391] rates to Helena are higher than to Memphis by 10.5 cents on wheat and 8.5 cents on coarse grains from St. Louis, Cairo, and all points in Illinois; by 6 cents on wheat and 4.5 cents on coarse grains from Omaha; and by 2.5 cents on wheat and 1.5 cents on coarse grains from Kansas City. In the Part 7 adjustment no specific basis was prescribed to Helena, but the carriers made the rates to Helena the same as to Memphis from all origins. The contention is that this basis was not justified under Helena Traffic Bureau v. Missouri Pac. R. Co., 89 I. C. C. 405, in which it was found unduly prejudicial to Helena and unduly preferential of Memphis for the Missouri Pacific to maintain over its west-side route rates on grain and grain products higher to Helena than to Memphis by more than 2.5 cents on wheat and 1.5 cents on coarse grains from Kansas City, and from points in Kansas and Missouri basing thereon, or by more than 5 cents on wheat and 3.5 cents on coarse grains from St. Louis, and from points in Iowa, Missouri, and Nebraska basing thereon. In that case it was observed that conditions affecting the transportation to Helena and Memphis were substantially dissimilar. Rates of the east-side lines were not in issue in that proceeding.

The rates to Helena will be 3 cents higher than to Memphis from St. Louis, and 2 cents higher than to Memphis from Kansas City.

St. Louis and Cairo to Arkansas Via Memphis

Joint rates to points on the Missouri & North Arkansas are in effect from St. Louis and Cairo in connection with the St. Louis Southwestern through Fargo, Ark., and in connection with the Missouri Pacific through Kensett and Helena, but not in connection with any line through Memphis, although in many instances the routes through Memphis are shorter than through Fargo, Kensett, or Helena. To stations on the Missouri & North Arkansas between Helena and Wheatley the rates are higher than to Wheatley by 5

cents from St. Louis and Cairo, and by 19.5 cents from Memphis. A similar situation exists at Daggett and Edgewood, intermediate between Memphis and West Point, over the short route of the Rock Island through Wheatley. From Memphis the rate is 15 cents to West Point, 31.5 cents to Daggett, and 32.5 cents to Edgewood. The latter two rates are higher than from Cairo and St. Louis, for much shorter hauls than from Cairo and St. Louis. The request of Memphis is for joint rates from St. Louis and Cairo, applicable via Memphis as well as via Arkansas junctions, and for joint rates from Memphis on the same relative basis as from St. Louis and Cairo.

The short-haul provision of section 15 (4) prevents the prescription of joint rates from St. Louis and Cairo via [fol. 392] Memphis, but the present adjustment of rates from St. Louis, Cairo, and Memphis unduly prejudices Memphis and should be corrected by making the rates from Memphis on the same relative level as from St. Louis and Cairo. In connection with the Illinois Central the joint rates from St. Louis and Cairo should apply through Memphis.

Oklahoma Joint-Line Rates

Oklahoma interests complain that the carriers failed to establish the Part 7 rates between their established groups in Oklahoma for joint-line application. Neither the interior scale rates nor reasonable groupings authorized in connection therewith were limited to single-line application. The southwestern rates prescribed herein will apply for both single-line and joint-line hauls.

Oklahoma Versus Kansas to Kansas City

The Part 7 prescription of relatively higher rates from Oklahoma to Missouri and Mississippi River markets and to the Gulf ports than from Kansas to Kansas City is alleged by Oklahoma interests to have been unreasonable. To Kansas City, St. Louis, and other northern markets, the prescribed rates from northern Oklahoma were only slightly higher than from Kansas and the prescribed rates from southern Oklahoma were made to grade into the rates from Texas. The rates from Texas to the northern markets in turn were made the same as from Kansas and Oklahoma to Texas, and within the Southwest generally.

A lower general level of rates in western trunk-line territory than in southwestern territory, to reflect the better

transportation conditions in the former territory, has hereinbefore been found justified. In the revision herein made the rates from Oklahoma to Kansas City and St. Louis are logically made to grade up gradually from the western trunk-line basis from Kansas to those markets into the higher southwestern basis applicable from Texas to the same markets, from Texas and Oklahoma to the Gulf, and within the Southwest generally. In thus grading from a lower into a higher rated territory the spreads between the rates from Kansas-Oklahoma border points will be greater than would result from grading in a territory of common rate level.

Oklahoma to Texas

The present rates from Oklahoma to Texas, as already explained, are made on basis of the second 12244 scale. The Part 7 rates from Oklahoma were made to Texas groups 1, 2, and 3, in northern, central, and southern Texas, as defined in the original report. Rates to group 1 were made 5 cents, [fol. 393] and to group 2 2.5 cents, less than to group 3. These are the groupings and differentials applicable in connection with the present rates from Kansas, Colorado, and other northern States. The Oklahoma commission complains that the Part 7 revision resulted in rates to Texas north of an east-and-west line through Waco higher than the Part 7 southwestern interior scale, and suggests that grouping is not feasible for distances less than 250 miles. This suggestion is opposed by other shippers, particularly in Kansas and Texas, who point to its alleged inconsistency with the further suggestion of the Oklahoma commission that rates to the Texas ports be grouped rather than made on a mileage basis. The Texas interests advocate a grouping of northern Texas, subject to an alternative distance scale for the shorter distances, and subject also to rates to group 1 that are 8 cents, and to group 2 that are 4 cents, less than to group 3.

The revised rates herein prescribed from Oklahoma are to Texas groups 1, 2, and 3, but with a modification of the Part 7 grouping by extending the Part 7 group 1 to include a part of the Part 7 group 2. The Part 7 findings are further modified by making the rates from Oklahoma to Texas group 1 and to Texas group 2 respectively 6 cents and 3 cents less than to Texas group 3, and by the prescription of the revised 12244 scale for distances up to 100 miles.

Under the revised groupings Texas group 1 will extend east from Quanah through Denison to Texarkana and the State line, south to Waskom, thence west along the Texas & Pacific through Longview, Dallas, Fort Worth, and Abilene to Big Spring, thence northeasterly through Fluvanna and Girard to Quanah. Group 2 is south of group 1 and embraces the territory north of a line south and east from Big Spring through San Angelo, Temple, Hearne, Palestine, and San Augustine to the State line. Group 3 extends south from San Angelo to and including San Antonio, thence southwesterly along the San Antonio, Uvalde & Gulf, through Pleasanton, Mathis, and Odem to Corpus Christi, thence northeasterly along the coast line to the Texas-Louisiana State line, thence north along that line to an intersection with the southern boundary of group 2.

The revised rates herein prescribed are made by applying the revised southwestern scale for the average distances to group 3 and the revised relation of groups 1 and 2 to group 3.

The revised groupings and differentials will also govern shipments from Kansas, Colorado and other northern States.

Oklahoma-Texas Border Points

With the application of distance rates on intrastate traffic within Oklahoma, and of specific rates to Texas groups from Oklahoma, pronounced disparities will result at Okla- [fol. 394] homa-Texas border points, unless the level of the Oklahoma intrastate rates is made to conform as nearly as possible to the level of the prescribed interstate group rates. The disparities would be much greater under the present Oklahoma intrastate scale than under the revised southwestern scale, which the Oklahoma commission will presumably adopt for intrastate application, in accordance with the spirit of cooperation. To make the group rates only to the more distant point in the Texas groups, and the scale rates to the nearer points in those groups, as suggested by one of the parties, would be unfair to the carriers, because the group rates are the scale rates for average distances to groups, and all of the rates would be less than the group averages. Unreasonable disparities at the Oklahoma-Texas border will be avoided by grading between the scale rates in Oklahoma and the rates from Oklahoma to Texas group 1 points, near the Oklahoma border, such

as Chillicothe, Vernon, Wichita Falls, Ringgold, Gainesville, Denison, Sherman, and Paris. This grading will be left to the judgment of the carriers, but in no instance should there be a spread of more than 5 cents between border points in Oklahoma and Texas.

Oklahoma to Louisiana

It has been explained that the present rates from Oklahoma to Louisiana are made on the basis of the 15026 scale. The present rates from Kansas, Colorado, and other northern States apply to Louisiana groups 1, 2, and 3, extending from east to west across the State in northern, central, and southern Louisiana, and progressing upward in rate 2.5 cents group 2 over group 1 and 2.5 cents group 3 over group 2. Under the Part 7 revision the rates from Oklahoma were made to Louisiana groups 1, 2, and 3, as described in the original report, but the rates to points in the respective groups west of the Ruston line, hereinbefore described in connection with the proportional rates from St. Louis and Kansas City to Louisiana, were made 3 cents less than to points on and east of that line. From Oklahoma the revised rates herein prescribed will be the same to points on and east as to points west of the Ruston line. The revised Louisiana groupings will be the same as the Part 7 groupings, except for the elimination of the Ruston line. The rates to group 1 will be 6 cents, and to group 2 will be 3 cents, less than to group 3.

Louisiana group 1 will be immediately east of Texas group 1 and will embrace the area east from the Texas-Arkansas line to the Mississippi River and south of the Vicksburg, Shreveport & Pacific to include Shreveport, Monroe, and Tallulah; also Vicksburg, Miss. Louisiana group 2 will be immediately east of Texas group 2 to the Mississippi River, this grouping will govern shipments not only from Oklahoma, but also from Texas, and from Kansas, [fol. 395] Colorado, and other northern States and south to include the line of the Texas & Pacific, including Natchitoches and Alexandria; also Natchez, Miss. Louisiana group 3 will embrace the remainder of the State south of group 2.

Oklahoma to Memphis

Most of Oklahoma's average wheat crop of 40,000,000 bushels is raised in the northwestern quarter of the State,

and 15,000,000 bushels are marketed by Oklahoma mills. Formerly the most important outlet for the surplus Oklahoma wheat was Galveston for export, but with the marked decline in export grain shipments in the past few years the principal markets have been Oklahoma, Arkansas, Louisiana, and northern Texas in the Southwest, and Memphis for the Southeast. The great volume of Kansas wheat precludes any considerable percentage of the Oklahoma wheat precludes any considerable percentage of the Oklahoma wheat moving to the North and East. In Texas, Oklahoma meets the competition of the Texas mills located largely in northern Texas. The most important Oklahoma rate today is the rate of 31.5 cents to Memphis for the Southeast. This rate applies from a group embracing about two thirds of the State, with the shortest haul 475 miles, the longest haul 650 miles, and the average haul 564 miles. In the Part 7 revision the Oklahoma origin group was discontinued, and specific rates were prescribed from key points in Oklahoma. The Oklahoma millers object to the Part 7 revision in the following respects:

1. Rates from Oklahoma were higher to Memphis than to Cairo, and higher through Memphis than through Cairo and Ohio River gateways east of Cairo, to the Carolinas and Tennessee, although the distances to and through Memphis are less than to and through Cairo and Ohio River gateways east of Cairo.

2. Rates from Oklahoma to Memphis for the Carolinas were higher than from Kansas to the Ohio River gateways for the Carolinas, although the distances from Oklahoma to Memphis are less than from Kansas to the Ohio River gateways; and rates from directly intermediate points in Oklahoma through Memphis to the Carolinas were higher than from Kansas through Oklahoma and Memphis to the Carolinas.

3. For the purpose of equalizing rates through Memphis with rates through the Ohio River gateways to the Carolinas from Kansas, proportional rates were established by the southeastern lines from Memphis to the Carolinas 6 cents lower on Kansas grain than on Oklahoma grain, which caused transit operators in the Southeast to prefer Kansas grain over Oklahoma grain in their reshipments to the Carolinas.

4. Rates from Oklahoma to Galveston were reduced by greater amounts than from Oklahoma to Memphis.

[fol. 396] Much of the complaint of the Oklahoma millers embraced under 1, 2, and 3 was due to revisions of the proportional rates from Kansas City to Memphis, St. Louis, and Cairo, and to the present plan of equalizing the rates through these gateways to the Carolinas. On Kansas grain shipped to the Carolinas rates from Cairo, as previously explained, are now 6 cents higher than from Memphis, to equalize inbound rates to Cairo 6 cents less than to Memphis. From Kansas City the Part 7 rate to Memphis was 16 cents, and to St. Louis 9 cents. The rate-break combination from Kansas City to Cairo, using the present proportional of 3 cents from St. Louis to Cairo, which was not changed, would have been 12 cents. The carriers voluntarily established a rate of 10 cents from Kansas City to Cairo, to continue the present equalization. On grain from Oklahoma the present proportional rate from Cairo to the Carolinas is the same as from Memphis to the Carolinas. The Cairo and Memphis gateways are therefore now equalized to the Carolinas on Kansas but not on Oklahoma grain. Rates within or to the territory south of the Ohio and east of the Mississippi River (except eastbank Mississippi River points) are not in issue in this proceeding, and no order was made in respect of grain from Cairo and Memphis to the Carolinas. The situation described in the third contention of the Oklahoma millers was therefore not changed by the Part 7 revision.

The adjustment complained of is unusually complicated, because of the crossing of two entirely different rate adjustments, namely, the southwestern adjustment from Oklahoma to Memphis and the western trunk-line rate-break combinations from Kansas to Cairo. From Kansas the distances are greater to Cairo than to St. Louis, and greater to Memphis than to Cairo. The inbound rates to these markets reflect relative distances. Distances are less from Oklahoma to Memphis than from Oklahoma to St. Louis and Cairo, and less from Oklahoma through Memphis than from Oklahoma through St. Louis and Cairo to the Carolinas. To bring about the equalization of Memphis and Cairo on Oklahoma grain, on the same basis as on Kansas grain, would require the establishment from Oklahoma of rates to Memphis 9 cents higher than to St. Louis, and 6 cents higher

than to Cairo, obviously a distorted adjustment, and demonstrating that the adjustment requested by the Oklahoma millers cannot be adequately considered until the rates from Ohio and Mississippi River gateways into the Carolinas are before us.

To Memphis the present grouping of Oklahoma will be continued, but the area of the group will be somewhat reduced. The eastern boundary of the revised group, instead of extending to the Arkansas border, will be the Santa Fe south from Chilocco through Oklahoma City and Ardmore, [fol. 397] and the western boundary will be the Santa Fe southwesterly from the Kansas-Oklahoma border to Woodward, thence the Missouri-Kansas-Texas through Elk City, Altus and Frederick, which is substantially the present boundary. To Memphis the revised rates will be 34 cents from this group, and will grade upward west of the group to maxima of 35 cents at Sayre, 37 cents at Buffalo, 38 cents at Forgan, and 41 cents at Hooker and Guymon, and grade downward east of the group according to mileage; except that on shipments to Memphis destined to Tennessee and the Carolinas the revised rates, pending consideration of the rates from Cairo and Memphis to the Southeast, will be 4 cents less than the rates shown. The resulting rate of 30 cents from the Oklahoma group to Memphis, on shipments destined to Tennessee and the Carolinas, will be the same as the rate-break combination to Memphis from points in southern Kansas contiguous to the Oklahoma group, and will afford some relief to the Oklahoma millers. This finding contemplates the observance by the carriers, on shipments from Kansas to Tennessee and the Carolinas through Cairo, of the rate-break combinations on Kansas City and St. Louis to Cairo. A corresponding revision of the rates from Texas to Memphis, on shipments destined to Tennessee and the Carolinas, will be required. The spread between the rates from Oklahoma to Memphis and from Oklahoma to Galveston will be narrowed by the prescription of rates from Oklahoma to the two gateways on substantially the same general level.

Oklahoma to Vicksburg

In the original report no specific finding was made covering the rates from Oklahoma to Vicksburg, Miss., an important east-bank Mississippi River gateway. During the period of the Part 7 adjustment the rates from Oklahoma

to Vicksburg were made largely by combinations on west-bank gateways. The Oklahoma millers complain of this adjustment. The average distance slightly favors Memphis from a part of Oklahoma. From the Oklahoma origin group to Memphis, and Oklahoma points west thereof the rates to Vicksburg will be the same as to Memphis.

Central Territory to the Southeast

The present equalization of combinations on St. Louis and Ohio River gateways with the combinations on Memphis, on shipments from the Missouri River markets to southeastern and Carolina territories, has already been described. Grain and milling interests in Michigan, Illinois, Indiana, and Ohio want this equalization continued. They also want a continuation of the present general relation of rates from [fol. 398] their territory, and from west of the Mississippi and Missouri Rivers, to the territory south of the Ohio and east of the Mississippi Rivers, reached from the Missouri River both through Memphis and through Evansville, Cincinnati, and Louisville, and reached from Michigan, Illinois, Indiana, and Ohio through Evansville, Cincinnati, and Louisville. In the Part 7 revision the proportional rate from Kansas City to Memphis was reduced 5.5 cents, in shipments for the Southeast, and inbound local rates to Kansas City were reduced in lesser amounts, but no reductions were made in the rates from Michigan, Illinois, Indiana, and Ohio to Evansville, Cincinnati, and Louisville, or in the through rates to the Southeast, because those rates were not in issue. The Southeast is said to be the most important market for central-territory grain and its products, and the situation resulting from the changed relation of rates from the two territories became so acute during the Part 7 period that the central-territory interests appealed to the carriers for temporary relief pending consideration of the southeastern adjustment, but the carriers declined to make what they characterized as such drastic reductions as would be necessary to restore the equalization of western and central territory rates. The central-territory interests assert that the situation complained of will again arise if reductions are made in the rates from the West in advance of consideration of the southeastern rates, and that the only alternative is a lowering of price to the producers in the Central States sufficiently to offset the reductions in rates from the Western States.

The revised adjustment herein increases the Part 7 rate from Kansas City to Memphis 2 cents and to that extent alleviates the disadvantage of the Central States.

Texas Milling Interests

Generally speaking, the Texas milling interests want no change in the Texas common-point adjustment, on which their industry is said to have been built, or in the relation of rates to Texas and other territories. For example, they specifically oppose reductions in rates from Kansas, Oklahoma, and Texas to Kansas City without corresponding reductions from Texas to Galveston. The latter relation is said to be necessary to keep Texas flour in proper relation with Kansas flour in the important markets on the Atlantic seaboard, which are reached from Kansas by rail through Kansas City to Chicago and rail or lake-and-rail beyond, and from Texas by rail to Galveston and water routes beyond. The present average rates to New York are 66.5 cents from Kansas for 1,585 miles, and 53 cents from Texas for an estimated 1,219 miles, using constructive mileage [fol. 399] for the water service beyond Galveston.[45] The rates from Kansas through Kansas City include deliveries at inland points, but the rates from Texas through Galveston include delivery on the seaboard docks only, and require an additional charge of from 7 to 15 cents to make the inland deliveries said to be required by many purchasers of flour.

Wheat in Kansas is bought on basis of the Kansas City price less freight and handling charges, and in Texas on the basis of the Texas common-point price less freight and handling charges. The Texas shippers say that a rate reduction from Kansas to Kansas City without a corresponding reduction from Texas to Texas group 3 will enable the Kansas flour millers to undersell the Texas flour millers in the Atlantic seaboard markets by the amount of the reduction to Kansas City. They contrast a present average rate of 18 cents for 274 miles from Kansas to Kansas City with a rate of 24.5 cents for a similar haul in Texas, and

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[45] July 1, 1934, subsequent to the close of the reopened record herein, the carriers from Chicago and St. Louis to New York reduced the rate on grain and grain products 5.5 cents, which reduction was reflected in the through rates from Kansas to New York.

contend that if the rates from Kansas to Kansas City are merely gathering rates and in substance, as some contend, parts of through rates to proportional-rate destinations beyond Kansas City, so are the rates from Texas to Texas ports merely gathering rates and in substance parts of through rates to destinations beyond those ports.

The foregoing contentions fail to take into account that a reduction in the rates from Kansas to Kansas City, unless the Kansas City market price should decline in the full amount of the reduction, would make the interior Kansas miller pay more more for his wheat, which would tend to offset his relatively lower shipping costs to New York. The bulk of the Texas wheat originates in the Texas Panhandle, from which the average distance to Texas group 3 is at least twice the average distance from Kansas to Kansas City. A comparison of rates from Kansas to destinations beyond Kansas City with rates for the longer hauls in Texas is proper. For example, to Chicago the present average rate from Kansas is 36 cents, and the Part 7 average rate was 33 cents, for an average distance of 725 miles, compared with a present rate of 34 cents, and a Part 7 rate of 33 cents, from Dalhart, Tex., in the Panhandle district, to Galveston, for the same distance. Most of the haul from Kansas to Chicago is through a territory of greater carrier earnings, and of greater density of grain and grain products as well as of general traffic, than obtains in Texas. The Texas millers concede that at least half of their production is sold in Texas, compared with not over 4 percent of the Kansas production marketed in Kansas City.

[fol. 400] A general survey of comparative transportation conditions in western trunk-line and southwestern territories has hereinbefore been made and comparative rate levels responsive thereto have been prescribed. The Texas common-point adjustment has been left largely as it is. The revisions made in the rates from Kansas to Kansas City and between other points in western trunk-line territory are not viewed as prejudicial to Texas interests.

Texas to Memphis-Vicksburg

Present rates to Vicksburg are higher than to Memphis from the northern part of the Texas Panhandle, and the same as to Memphis from the southern part. The part 7 rates were, generally speaking, 5 cents lower to Vicksburg

than to Memphis from the entire Panhandle district. Memphis contends that the Part 7 revision was not warranted by considerations of distance and general transportation conditions. The average distance favors Memphis by about 20 miles from the northern part of the Panhandle district, favors Vicksburg by about 60 miles from the southern part, and favors Vicksburg by about 20 miles from the district as a whole. Panhandle and Memphis interests complain that the present rates to Memphis are relatively higher from the Panhandle district than from Oklahoma. The rates herein prescribed will remove any just cause for complaint in these situations.

Coarse Grains from Texas to Memphis

Memphis asks for rates on oats, barley, and sorghums from Amarillo and Texas points north thereof to Memphis 5 cents lower, and to New Orleans 5 cents higher, than to Vicksburg; and for equal rates on all grains from central Texas, including Forth Worth, to all Mississippi River gateways, Memphis and south. From central Texas the distances are slightly less to Vicksburg than to Memphis, but the transportation is usually over joint routes to Vicksburg and over single-line routes to Memphis. In the Part 7 revision both increases and reductions were made in the rates from Texas to Memphis. From Amarillo the rate on coarse grains was increased 6 cents to Memphis and reduced 6 cents to St. Louis, and the rate to Memphis became 4 cents higher than to St. Louis, for 30 miles less distance than to St. Louis, a relative adjustment complained of by Memphis. The revision herein makes the rates from Texas to Memphis the same as from Texas to Vicksburg, and properly relates the rates from Texas to Memphis and St. Louis. The relation of rates from Texas to Memphis and New Orleans, on shipments for beyond, will be left to the carriers.

[fol. 401] Texas to Texas

On Texas intrastate traffic the present common-point basis of mileage rates up to 28 cents for 350 miles and a blanket rate of 33 cents for all distances over 350 miles, applicable as far north as Higgins, has been described. That adjustment results in serious discriminations against shippers from Oklahoma border points to Texas in competition with shippers intrastate from northern Texas. To remove this

discrimination the area of the common-point territory should be narrowed to include approximately the territory within a line drawn just north of the line of the Rock Island from Benonine to Amarillo, thence via the Santa Fe through Canyon and Plainview to Lubbock. The revised southwestern scale basis herein used as the measure of the southwestern interstate rates should be applied also on Texas intrastate traffic. It would make no change in the present rate of 28 cents for 350 miles, or in the blanket rate of 33 cents for distances over 350 miles. Within differential territory, and between differential and common-point territories, the addition of the present Texas wheat differentials for that portion of the haul in differential territory would result in a reasonable relation between the Texas intrastate rates and the prescribed interstate rates. Rates from stations on the Santa Fe from Amarillo to Higgins should grade upward from 33 cents at Amarillo to 36 cents at Higgins.

Texas Industrial Traffic League

The Texas Industrial Traffic League and Central Grain Committee of Texas, the former representing the shippers of Texas in traffic and transportation matters generally, and the latter representing the grain and milling interests, including the producers, request that the question of transit be left within the discretion of the carriers, to meet the needs of the various sections of the western district; that constant transit balances be made applicable out of transit points, where possible; that Texas destinations be grouped from Oklahoma, Kansas, Nebraska, Missouri, and Colorado, similar to the adjustment in the Part 7 revision; that on Texas intrastate traffic the present common-point system of blanketing all hauls beyond a given mileage at one rate be continued; that rates be prescribed from country origins only to the first markets, leaving the carriers to adjust rates between interior points (this on the theory that the producers are affected only by the rates to the markets on which their country prices are based); that rates to the first markets be made on as low a basis as possible, consistent with the maintenance of an adequate transportation service; and that transit stops for inspection, storage, and manufacture be permitted without separate charge.

[fol. 402] In the main the above suggestions are embodied in the findings herein.

Contentions of Fort Worth

The Fort Worth Grain and Cotton Exchange, on behalf of grain, feed, and milling interests at Fort Worth and other northern Texas milling points, makes various contentions regarding the level of the rates in the Southwest; the Texas and Louisiana groupings and differentials between Texas and Louisiana groups; alleged inadequate routing through Fort Worth of shipments from Kansas, Oklahoma, and other States to Louisiana; joint rates from Oklahoma and Texas to New Mexico (over Texas intrastate routes to border points); through rates over rail-and-water routes from Oklahoma and Texas through Texas ports to the Atlantic seaboard; transit rules and regulations; and export rates.

The southwestern rate level has been fully discussed elsewhere herein. Some revision of the Part 7 Texas and Louisiana groupings and differentials has been made. While the requested routing through Fort Worth of shipments from Kansas, Oklahoma and other States to Louisiana cannot be required herein, because of the short-haul provisions of the statute, the carriers should give careful consideration to this general situation, with a view to removal of any substantial injustice to Fort Worth. Joint rail-and-water rates to the Atlantic seaboard are not within the scope of this proceeding. Findings as to transit and export rates are made elsewhere herein.

Texas Grain Dealers Association

The Texas Grain Dealers Association, representing dealers at Texas country points and terminal markets, request a modification of the present Texas common-point adjustment by blanketing the maximum rate for all distances over 250 miles, instead of over the present 350 miles, a reduction of at least 20 per cent in the present intrastate rates, short-haul rates low enough to meet truck competition, a reduction in the carload minimum weights on sacked grain, seeds, and feeds, a continuation of present transit rules, and an equality in domestic and export rates. They suggest that new outlets must be found for Texas grain, similar to that recently afforded grain from the Texas Panhandle to California in I. and S. 3760, and they urge that the rate structure should not be so adjusted as to force grain to Galveston or any other gateway, by direct rates without

transit or by other innovations prompted by local self-interest.

Findings as to the general level of the southwestern rates, modification of the Texas common-point area, transit, and [fol. 403] the relation of export and domestic rates are made elsewhere herein. The prescription of a reduced carload minimum on sacked grain, seeds, and feeds is not warranted upon this record.

Texas Panhandle Interests

The Part 7 adjustment was in the main satisfactory to the grain and milling interests in the Texas Panhandle, represented by the Amarillo Grain Exchange and the Panhandle Grain Dealers Association. It is said to have permitted the free movement of wheat from the Texas Panhandle to Kansas City, New Mexico, Arizona, and California, as well as to Texas, and to have benefited the producer of wheat in the Texas Panhandle by the stimulation of competition for the purchase of wheat in that district, which is said to have been previously controlled by the Texas millers and grain dealers. It is further stated that, except for the new outlets afforded by the Part 7 revision, the worst congestion in the history of Texas, with disastrous results to the producer, would have occurred in 1931, when the production of wheat in the Texas Panhandle reached the record proportion of 60,000,000 bushels. The Panhandle interests would modify the Part 7 adjustment, however, by making the rates from the Texas Panhandle to Kansas City and Texas from five groups, differing in areas to Kansas City and Texas, to meet commercial needs and trend of movement, the group adjustment to alternate with a distance scale for distances up to 250 miles, and to supersede the point-to-point rates prescribed in the Part 7 adjustment and the group rates checked in by the carriers between interior points, which latter rates in all instances are said to have been higher than the mileage-scale rates for average distances between groups. To Memphis they would make the rates from the Texas Panhandle in closer relation to the rates from western Oklahoma and Kansas than was prescribed in the Part 7 adjustment.

The suggested grouping of the Panhandle district for shipments to Kansas City is deemed inadvisable. Rates are herein prescribed from key points in that district to

Kansas City and Memphis on a reasonable basis and relation.

Texas Interests Generally

Texas interests generally, while divided in view as to the appropriate form of the rate structure for the State, are united in opposing the 3-way rule, the cancelation of cross-town switching absorptions, and the construction of through rates from Kansas to Texas by combination on Kansas City instead of on a distance basis over more direct routes. They are also united in requesting the application of the domestic [fol. 404] rates from interstate origins to Texas group 3 as export rates to Rio Grande gateways on shipments to Mexico.

The record does not warrant the prescription of the requested export rates to the Rio Grande crossings. The other contentions are disposed of elsewhere herein.

Texas Transit Rules

The Oklahoma Corporation Commission complains that the intrastate transit rules in Texas relating to out-of-line hauls and shelling of corn in transit discriminate against interstate traffic from Oklahoma.

Texas transit rules provide for 100 miles out-of-line service without separate charge, computed by subtracting the short-line distance from origin to destination from the short-line distance from origin through the transit point to destination, although the shipment need not move through the transit point over the shortest route through that point. For an out-of-line haul in excess of 100 miles so computed a charge of 7 mills per ton mile is assessed. No similar rule obtains on interstate shipments. On such shipments liberal out-of-line hauls without separate charge are permitted in some instances and not in others. Generally speaking, the interstate transit provisions are more liberal than the Texas rule in respect of out-of-line hauls. A finding of discrimination against interstate shipments resulting from Texas transit rules is not warranted upon this record.

On shipments of corn shelled in transit in Texas, local rates are collected to the transit station on the full weight of the shipment. On outbound shipment of the shelled corn final settlement of charges is made on basis of a reduction of 20 per cent in the inbound weight, as an allowance for the weight of the cobs. On interstate shipments from Okla-

homa to Texas there is no such adjustment of inbound weight and charge. A finding of undue prejudice against interstate traffic in this respect is not warranted.

New Mexico to Texas and Northern and Eastern Points

Grain production in New Mexico is confined principally to a small area in the eastern part of the State extending westerly about 25 miles from the Texas border, and is heaviest between Clovis and Melrose, and Clovis and Portales, on the Santa Fe; on the Rock Island, east of Tucumcari; and around Mosquero on the Dawson branch of the Southern Pacific.

From New Mexico the present rates to the north and east are related to rates from Farwell and Glen Rio in Texas, just over the New Mexico border. The northbound adjust- [fol. 405] ment was prescribed in the second 12244 case. In the Part 7 revision no specific rates were prescribed from New Mexico, but the carriers continued to relate the rates from New Mexico with those from Farwell and Glen Rio. To Texas, for example, the following basis was observed:

New Mexico origin	Distance from—		Arbitrary over—	
	Farwell Miles	Glen Rio Miles	Farwell Cents	Glen Rio Cents
Clovis	9	..	2	..
Portales	27	..	4	..
Melrose	33	..	4	..
Fort Sumner	69	..	6	..
San Jon	..	18	..	2
Tucumcari	..	41	..	4

These arbitraries were reductions under the former differences and were satisfactory to shippers. The arbitraries over Farwell were published as proportionals by the Santa Fe, but the arbitraries over Glen Rio were reflected in one-factor through rates by the Rock Island.

In Portales Chamber of Commerce v. Atchison, T. & S. F. Ry. Co., supra, the rates on grain and related articles taking the same rates from points in eastern New Mexico on the Santa Fe to destinations in Texas, Oklahoma, Arkansas, and Louisiana, and to Mississippi River crossings, Memphis, Tenn., and south, were found unreasonable to the extent they exceeded the second 12244 scale rates plus the differentials prescribed in that case for hauls in differential territory, except that to Texas specified arbitraries over the rates to Farwell were prescribed, using on wheat the Part

7 arbitraries and on corn 90 per cent of those arbitraries.

The finding herein that in the Southwest rates from non-key points shall be related to the rates from key points by 0.5 cent for each additional 15 miles or less will greatly reduce the arbitraries over Farwell prescribed in the Portales case, and the reduced arbitraries, applied in connection with the rates herein prescribed from Texas to other destinations, will result in through rates from New Mexico lower than the rates prescribed in that case.

Utah and Southern Idaho to North Pacific Ports

To north Pacific ports present rates on grain are relatively much lower from Montana, Oregon, Washington, and northern Idaho than from Utah and southern Idaho. The Part 7 rates were only slightly lower from the one territory than from the other. The Colorado Milling and Elevator Company alleges an undue prejudice to its mills in Utah and southern Idaho, and an undue preference of competing mills in Montana, Oregon, Washington, and northern Idaho, in [fol. 406] respect of the rates to north Pacific ports, and asks for removal of the discrimination by the prescription of a common level of rates from the respective territories. The State of Idaho also complains that the relatively lower rates from Montana than from southern Idaho to north Pacific ports and to California unduly prejudices southern Idaho.

In Ogden Grain Exc. v. Arizona E. R. Co., 126 I. C. C. 255, relatively higher rates were approved from southern Idaho and Utah than from Montana to the north Pacific ports, because the record was not convincing that the transportation conditions were as favorable from southern Idaho and Utah as from Montana, or that the competition at north Pacific ports between shippers from southern Idaho and Utah and shippers from Montana was as severe as the competition between Montana shippers and Canadian shippers. The present record demonstrates that the transportation conditions from southern Idaho and Utah are as favorable as from Montana, and that grain from southern Idaho and Utah is in keen competition with all other grain in the north Pacific markets.

The carriers from Montana to north Pacific ports are not the same as those from Utah and southern Idaho to those ports, or to California, but are the same from southern Idaho as from Oregon, Washington, and northern Idaho

to north Pacific ports. Present rates from Montana to the latter ports, herein found not unreasonable, and proposed by the carriers for the future, are about 10 per cent less than the rates herein prescribed from southern Idaho to California. The present relatively lower rates from Oregon, Washington, and northern Idaho than from southern Idaho to north Pacific ports are the result of competitive conditions not affecting rates from the other territories. From Utah and southern Idaho origins distant 600 miles or more from Portland, a group rate will apply to Portland, Vancouver, Longview, Tacoma, Seattle, and Astoria.

Wyoming-Colorado Grouping and Routing from Colorado Group through Denver

In the Part 7 revision the carriers established lower rates to the Missouri River from points in Wyoming and Nebraska on the line of the Union Pacific between Cheyenne, Wyo., and Julesburg, Colo., than from the Colorado group, but established the Colorado group rate from less distant points in Colorado and Nebraska. The line of the Union Pacific extends from Cheyenne easterly and southerly through southwestern Wyoming and western Nebraska to Julesburg, in the northeastern tip of Colorado. The blanket-[fol. 407] ing of all stations on the Cheyenne-Julesburg line with the Colorado origin group, on shipments to the Missouri River, is requested by Colorado shippers; also the extension of the eastern border of the Colorado origin group about 20 miles, and the establishment of routes through Denver to southwestern destinations from the Colorado group, so that grain from eastern Colorado can move through Denver to the Southwest on parity with Kansas City without violating the long-and-short haul provision of the fourth section. This cannot be accomplished without the suggested groupings if the through rates from Colorado are to be the rate-break combinations on Kansas City, inasmuch as the mileage rates to Kansas City would be higher from western than from eastern Colorado, and shipments moving at mileage rates from eastern Colorado through western Colorado via Denver would violate the fourth section, although in many instances the routes through Denver are the short routes. The situation could not be remedied by granting the carriers fourth-section relief without also requiring them to waive the provisions of the 3-way rule on shipments stopped in transit at Denver.

From Trinidad, Colo., to Fort Worth, Tex., the shortest distance is 589 miles, over a single-line route. From Trinidad to Kansas City the distance is 621 miles, and from Kansas City to Fort Worth 507 miles, or 1,128 miles from Trinidad to Fort Worth via Kansas City over a joint route. Colorado shippers contend that it is unreasonable to make the rate from Trinidad to Fort Worth by combination on Kansas City. This is probably the most extreme illustration of circuity through Kansas City, as Trinidad is the nearest point in a large origin group and Fort Worth is about the nearest point in a large destination group. Group averages substantially reduce the excess mileage through Kansas City over the direct mileage. No grain is produced in the immediate vicinity of Trinidad, and very little is produced on the line of the Santa Fe north from Trinidad to La Junta.

The routes through Denver, especially from western Colorado to Texas and western Louisiana, while shorter than through Kansas City in some instances, cross the foothills of the Rocky Mountains where traffic is light and transportation conditions are difficult. The routes through Kansas City traverse mostly a level and productive country where traffic is heavy and transportation conditions are favorable. The carriers have been permitted to add differentials to the rates on other commodities, to compensate for the adverse operating conditions over the routes through Denver. The addition of an appropriate constructive mileage to compensate for operating conditions would make the distances through Denver greater than through Kansas City. Most of the lines serving the Colorado grain fields run in an east- [fol. 408] erly direction to Kansas City and are entitled to their long hauls.

The modifications requested in this adjustment are found not warranted, except that stations on the Cheyenne-Julesburg line of the Union Pacific should be included in the Colorado group.

Eastern Nebraska-Kansas Grouping and Joint Hauls from Colorado

The rates from Colorado to the Missouri River are grouped both as to origins and destinations. The destination group includes the Missouri River markets from Sioux City south to Kansas City, also Joplin, Mo., and quite a substantial territory in eastern Kansas and eastern Ne-

braska. The westbound rates are 3.5 cents higher than the eastbound rates. In the original report no specific finding was made as to the rates from the Missouri River to Colorado, or as to the application of the eastbound rate to destinations other than Omaha and Kansas City, to which markets a common rate was prescribed. In the Part 7 tariffs the westbound rate was continued 3.5 cents higher than eastbound, but the eastbound destination group was broken up by the establishment voluntarily by the carriers of rates to eastern Nebraska and eastern Kansas lower than to Omaha, on the basis of the western trunk-line interior scale. Colorado shippers concede the propriety of rates higher westbound than eastbound, but they request the preservation of the boundaries of the eastbound destination group and the application of the prescribed rates for both single-line and joint hauls. They assert that the interior scales are not needed in this or other situations; that they only result in cutting the carriers' revenues without benefiting anyone; and that if rates are prescribed from a sufficient number of key points a better related adjustment of rates can be checked in by the carriers than would be if they were hampered by interior scales.

The carriers prefer to continue destinations in eastern Nebraska and eastern Kansas in the Missouri River group at the group rate from Colorado, as requested by the Colorado shippers, for single-line application only, with downward grading for shorter hauls, but object to the prescription of joint rates from and to all points in the groups. The basis proposed by the carriers has applied for over 30 years, and is said to be more necessary now than ever before, in order to avoid conflict with intrastate rates at the Colorado-Kansas border, resulting from the order of the Colorado commission in its proceeding no. 318. In that proceeding, after full hearing, the Colorado commission, during the reopened proceeding herein, prescribed intrastate rates, effective March 1, 1933, for single-line and joint-line application, 10 per cent higher than the Part 7 western trunk-line interior-scale rates, and 19 per cent higher than the Part 7 [fol. 409] key-point rates from Colorado to the Missouri River. Some revision of the Part 7 rates is therefore said to be necessary to harmonize the Colorado rates with those from Kansas. This may be illustrated by reference to the situation between stations on the Santa Fe.

On that line Prowers is the most easterly point in the

Colorado origin group, and Coolidge, 41 miles east of Prowers, is the first point in Kansas. Offerle, Kans., also on the Santa Fe, 146 miles east of Coolidge, is the most westerly point in the Missouri River destination group. Red Lion, on the Union Pacific in northeastern Colorado, about 400 miles from Prowers, is also in the Colorado origin group. If joint-line rates are prescribed from the group, as requested by Colorado shippers, the rate to Offerle will be the same from Red Lion as from Prowers. The Santa Fe would make the group rate to Offerle from Prowers but not from Red Lion. From Red Lion and Prowers, the rates to Coolidge must be graded in any event, because of the Colorado scale and short hauls involved. Holly is the last station in Colorado on the Santa Fe's line to Kansas City. The Colorado intrastate rate from Red Lion to Holly is 27 cents, 1 cent less than the prescribed Part 7 rate from Red Lion to Kansas City, 460 miles beyond Holly. Disparities also exist in the relation of rates to Kansas City from eastern Colorado and western Kansas. Present rates from Colorado are as much as 12.5 cents higher than from Kansas points across the border. This spread was narrowed to 6 cents in the Part 7 revision by a reduction of 5 cents in the rates from Colorado and an increase of 1.5 cents in the rates from Kansas.

The carriers ask that they be allowed some latitude in adjusting the foregoing situations, and others of a similar nature from the Colorado group to Santa Fe points in New Mexico. To Raton, N. Mex., for example, the group rate applies from Red Lion for 403 miles, Lamar for 177 miles, and Trinidad for 23 miles. The Colorado shippers have no objection to the grading of these latter rates, if the rates from Amarillo are similarly graded.

The record does not justify or require a general disruption of the present origin and destination groups on eastbound traffic from Colorado. Nor does it warrant a change in the long-established practice of the carriers in confining the group rates to points on their own lines for the shorter hauls. These adjustments will be left with the carriers to be dealt with as conditions may warrant.

Montana Eastbound versus Westbound

Generally speaking, the present group rate from central Montana is 3 cents lower to Seattle and other north Pacific coast ports than to Minneapolis and Duluth, for average

distances less to Seattle than to Minneapolis by 198 miles over the short routes and by 156 miles over tariff routes. [fol. 410] The movement is over the same lines in both directions. The Part 7 adjustment widened the central Montana group and made the rate from the broadened group 4 cents lower to Seattle than to Minneapolis.[46] The north Pacific coast millers want the Part 7 adjustment represcribed. The carriers propose to continue the present eastbound and westbound rates from the enlarged group, and Montana and Minneapolis-Duluth interests want the rates made the same in both directions. Montana millers show that the movement to the west coast is over several ranges of mountains, involving construction and operating costs materially higher than to the East; that the through rate on flour from central Montana to the Atlantic seaboard, via rail to north Pacific coast ports and steamship through the Panama Canal, is 4 cents less than from central Montana to New York via rail-lake-and-rail routes through Duluth, and 14.5 cents less than via the rail routes through Minneapolis and Chicago; and that in order to compete with the north Pacific coast mills in the Atlantic seaboard markets the Montana mills must ship their flour via the Pacific coast ports. These mills urge that there must be something radically wrong with a rate adjustment which compels them to ship their flour a thousand miles west over several ranges of mountains in order to go east. They contend that a parity of rates from central Montana to Minneapolis-Duluth and Seattle is fully justified, the longer mileage to the eastern markets being more than offset by the more costly operating conditions to Seattle. Minneapolis-Duluth grain and

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[46] Present rates from the central Montana group are 39 cents to Seattle and 42 cents to Minneapolis and Duluth. The prescribed rates were 37.5 cents to Seattle and 41.5 cents to Minneapolis and Duluth from an enlarged group embracing roughly the territory bounded by the east-and-west line of the Great Northern from Shelby to Havre, on the north; thence by a line southeasterly from Shelby to Great Falls, and southwesterly from Havre to Great Falls; thence all main and branch-line points south and east of Great Falls on the Great Northern, Milwaukee, and Northern Pacific, including Lewiston, Winfred, Roy, Winnett, Judith Gap, Harlowton, Livingston, Bozeman, Neihart, and Cascade.

milling interests make the same general contentions as the Montana millers.

The north Pacific coast interests support their request for a lower rate westbound mainly on comparisons of distance; a heavy westbound movement of empty cars which, they say, can be utilized for loading grain from Montana to the west coast, thereby insuring to the carriers a balanced movement in both directions and lessened operating costs; and the necessity of the west-coast mills for low rates from Montana to enable them to meet the competition of Canadian and other foreign flours in the Orient, which move at very low rates. These interests also criticise as unrepresentative the construction and operating statistics submitted by the millers in Montana and Minnesota, on the ground that they [fol. 411] are taken from reports of the carriers to State commissions, to which the allocation of expenses as between States is arbitrarily assigned.

The Public Utilities Commission of Idaho objects to the present higher general level of rates from southern Idaho than from Montana to north Pacific ports, pointing, for example, to a rate from Ringling, Mont., to Seattle 8 cents lower than from Twin Falls to Portland, for comparable distances, for a transportation service in each instance wholly within intermountain territory.

The basis herein found reasonable from southern Idaho to Seattle would result in a rate of 42 cents from central Montana to Seattle, if applied in that territory. This would seem to represent a reasonable maximum rate for the service from the enlarged central Montana group to Seattle, and would bring about the requested equalization of eastbound and westbound rates from that group. However, the carriers propose to continue their present rates both eastbound and westbound, and in the absence of a clear showing of undue prejudice the equalization will not be required, and the finding herein will be that the present rates are not shown to be unreasonable.

Rates from Alamosa, Colo.

Alamosa, Colo., is on a narrow-gage line of the Denver & Rio Grande Western, 154 miles north of Santa Fe, N. Mex., where connection is made with the standard-gage line of the Santa Fe. It is also on the standard-gage line of the Denver & Rio Grande Western, but shipments from Alamosa over that route to the South and West must move for much

greater distances through Walsenburg, Colo. A transfer from the narrow-gage to the standard-gage line at Santa Fe is necessary on all shipments. There are no present joint rates from Alamosa to New Mexico, Arizona, or El Paso, combinations on Santa Fe being applicable. In the original proceeding, upon complaint of Colorado shippers, rates from Alamosa to these destinations were found unreasonable to the extent they exceeded the contemporaneous rates from Denver, and rates from Montrose, Colo., also on the Denver & Rio Grande Western, to the same destinations, were found unreasonable to the extent they exceeded the rates from Denver by more than 15 cents. The Colorado shippers are satisfied with the adjustment there prescribed from Montrose, but ask that the rates from Alamosa be based on the shortest mileages through Santa Fe, plus a transfer charge of 2 cents at Santa Fe.

To New Mexico, Arizona and El Paso average distances from Alamosa are about 18 miles less than from Trinidad, and about 200 miles less than from the new Texas-Oklahoma-Colorado group. To these destinations the rates from Alamosa, including the transfer of lading at Santa [fol. 412] Fe, will be the same as the rates herein prescribed to the same destinations from the new Texas-Oklahoma-Colorado group.

Rates from Southern Idaho to Arizona

Unlike the rates from Colorado, the rates from southern Idaho are not blanketed over the entire State of Arizona, but are graded according to distance in the manner prescribed in Ogden Grain Exc. v. Arizona E. R. Co., 126 I. C. C. 255. In that case rates were made from southern Idaho to Colton and Daggett, Calif., not higher than to Los Angeles, and to Arizona by the addition of fixed arbitraries to the prescribed rates to Colton and Daggett. For example, the arbitrary was 9.5 cents from Daggett to Phoenix for 335 miles and 13 cents from Colton to Tucson for 445 miles. From American Falls the Part 7 rate was higher to Tucson than to Colton by 15.5 cents, or 2.5 cents more than the arbitrary from Colton to Tucson prescribed in the Ogden case. The difference of 15.5 cents is the difference in rate under a common scale to the two points. The Part 7 rates from southern Idaho to California were point-to-point rates, made without regard to arbitraries over Colton or Daggett.

The Colorado shippers contend that the routes from Col-

ton to Tucson and from Daggett and Colton to other points in Arizona, are across the desert in California and the mountains in Arizona, through a territory of light traffic and difficult operating conditions, and that it is unreasonable to apply from Colton to Tucson, under such conditions for 445 miles, a charge less, for example, than the present proportional rate of 17.5 cents, and the Part 7 proportional rate of 15 cents, from Kansas City to Chicago under traffic density and operating conditions vastly more favorable for 451 miles; that the only difference between the arbitrary from Colton to Tucson and the proportional from Kansas City to Chicago is in name; that the present through rate from American Falls to Tucson is in substance as much a rate-break combination on Colton as the rates from Kansas to Chicago are rate-break combinations on Kansas City; and that a reasonable rate basis would result from blanketing all of Arizona at a rate 16.5 cents higher from southern Idaho than from Colorado, subject, on flour, to a carload minimum of 40,000 pounds from both territories, in lieu of the present minimum of 40,000 pounds from southern Idaho, and 60,000 pounds from Colorado.

To Arizona average distances are about 1,335 miles from southern Idaho and about 942 miles from the eastern Colorado groups; to points in Arizona on and west of the Grand Canyon-Phoenix-Picacho line, elsewhere described, 1,235 miles from southern Idaho and 980 miles from Colorado; and to points east of that line 1,435 miles from southern [fol. 413] Idaho and 880 miles from Colorado. The average distance from southern Idaho to Arizona does not differ greatly from the average distance from the transcontinental groups to California, for which the prescribed rate is 65 cents. A reasonable rate from southern Idaho to Arizona will be 65 cents (flour, minimum 40,000 pounds), and is herein prescribed.

Montana to Arizona and New Mexico

No joint rates are in effect from Montana to Arizona or New Mexico over any route. In the original report (page 680) joint rates were prescribed from the Great Falls group in central Montana to Arizona and New Mexico 15 cents higher than the rates therein prescribed from Pocatello, Idaho. This resulted in rates of 67 cents to Phoenix, 66 cents to Yuma, and 76.5 cents to Lordsburg, N. Mex. From central Montana the short routes to western Arizona are

through Butte and Pocatello, thence via Colton or Daggett, Calif., and to eastern Arizona and all of New Mexico through Billings, Denver, and Trinidad, Colo. The average short-line distance to all of Arizona is about 1,700 miles. Considerably longer routes via north Pacific ports and California terminals, over which the originating carriers receive their long hauls, are also available.

Montana shippers ask for a represcription of the Part 7 adjustment. Colorado shippers do not oppose the request of the Montana shippers, but ask that joint rates, if prescribed, be not permitted to apply over the exceedingly circuitous routes through the ports on the north Pacific coast and in California, because of the resulting advantage to transit operators at the ports in substituting water-borne grain for rail grain.

A rate of 75 cents from the central Montana group, as defined in footnote 46, to Arizona would seem to be reasonable by comparison with the rate of 65 cents above prescribed from southern Idaho to Arizona, in view of the longer hauls from Montana than from southern Idaho, and is herein prescribed. This rate should be scaled back to points in New Mexico, and the rates to both Arizona and New Mexico should be made applicable over the short routes. The application of this basis over the longer routes through north Pacific and California ports will be left to the discretion of the carriers.

Missouri River Transit on Transcontinental Shipments

The present practice is to permit transit at the Missouri River markets on westbound transcontinental grain originating within territory about 150 miles west of the Missouri [fol. 414] River. Kansas City objects to the limitation of this transit to the present territory west of the river, in view of the large size of the destination group, to which a common rate applies for variations in distance of more than 1,500 miles, and in view also of frequent instances of the application of the same transcontinental rate with transit at interior points over routes varying a thousand miles or more in distance. It is said that similar routing restrictions are not placed upon shipments of other commodities through the Missouri River markets, including fruits, vegetables, canned goods, etc., and that the restriction as to grain and its products is evidently due largely to the insistence of the lines inbound to the Missouri River retaining their

full local rates instead of applying the percentage basis commonly used in connection with through rates.

This same general situation is discussed in the original report (page 674) in response to an allegation of undue prejudice on the part of interior Nebraska shippers. The finding was that the transit in question had not been shown to be unlawful. The present record does not warrant an order for its extension in the manner requested.

Transcontinental Shipments via Duluth

Duluth wants transit on transcontinental shipments originating west of that market in Minnesota and the Dakotas similar to the transit accorded the Missouri River markets on shipments originating west of those markets, as above described. The record does not warrant an order requiring this transit at Duluth.

Rate-Break Combinations on Eastbound Transcontinental Shipments

From Montana west of Eddy on the Northern Pacific, Rexford on the Great Northern, and Henderson on the Milwaukee, and from west of Granger, Wyo., on the Union Pacific, including all of Idaho, Oregon, and Washington, the blanket rates on wheat and flour are 65.5 cents to Minneapolis, St. Paul, the Missouri River markets, and Chicago, and 71 cents to Memphis. The latter rate is the combination of a proportional rate of 62 cents to St. Louis and 9 cents beyond when for the Southeast. In the Part 7 revision the carriers canceled these rates and made the through rates the higher rate-break combinations. This revision is alleged by the north Pacific coast shippers to have discriminated against their long-haul traffic, in the interest of the rate-break principle, and to have driven eastbound traffic to the Panama Canal route, as evidenced by the annual movement of 87,000 tons of flour over that route from Pacific coast ports to Gulf and Atlantic ports. The north Pacific [fol. 415] coast shippers therefore support the request of the rail carriers for a modification of the Part 7 findings regarding the exclusive application of the rate-break combinations, to permit of the establishment of such rates on this eastern transcontinental traffic as will in their best judgment meet the canal-route competition.

Colorado shippers join with north Pacific coast shippers in requesting further consideration of the north Pacific

coast eastbound transcontinental rates, but for a different reason. On eastbound shipments the transcontinental origin group on the Union Pacific extends from Huntington, Oreg., on the east to Portland on the west. Huntington is also included in the adjustment from southern Idaho, but Portland is not. In Ogden Grain Exc. v. Abilene & S. Ry. Co., 122 I. C. C. 691, point-to-point rates from Huntington and southern Idaho origins to the Missouri River, Chicago, and other eastern gateways were made fixed differentials over the rates from Denver, subject to the transcontinental rates as maxima. To Chicago prior to the Part 7 revision this maximum was applied. In the Part 7 revision the through rate from Huntington and southern Idaho to Chicago was reduced, as a result of reductions in the local rates from Colorado to the Missouri River, and in the proportional rates thence to Chicago. No specific finding as to the eastbound transcontinental rates was made, but the carriers made the rate from the transcontinental group 10 cents higher than the Part 7 rate from Huntington, and for the first time made applicable the basis prescribed in the Ogden case. They also for the first time created a spread of 10 cents between the rates from Huntington and Portland. The carriers further made the rate to Minneapolis the same as to Kansas City, the rate to Chicago by combination on Minneapolis, and the rates to St. Louis, Memphis, and New Orleans by combination on Kansas City.

The Colorado interests also ship from southern Idaho. They do not object to the rate-break combinations to the East, but are apprehensive that the reflection in through rates from Utah and southern Idaho of increased proportional rates from Kansas City, proposed by the carriers, without a corresponding revision of the transcontinental group basis, would unduly prefer transcontinental shippers over shippers from Utah and southern Idaho. The Colorado interests therefore ask that, if increased proportional rates from Kansas City are approved, and no change in the transcontinental rates is made, the differentials over Colorado on grain from Utah and Idaho, prescribed in the Ogden case, be reduced so as to clear the transcontinental rates.

The Ogden Grain Exchange asks that, in the event of no general change in the present rate structure, the differentials over Colorado common points, prescribed in the Ogden [fol. 416] case, be reduced 5 cents from Utah common points, and 6 cents from southern Idaho, in partial removal of an

alleged undue prejudice to shippers from those origin territories, and an undue preference of shippers from the transcontinental group.

The northern carriers ask that the transcontinental rates be left within the control of the carriers, subject to change from time to time to meet competition through the Panama Canal. They state that the movement of the bulk of the traffic, despite low rail rates designed to meet canal competition, is over the water routes, and they intimate that even lower rates may be necessary to regain some of the lost traffic. They further suggest that transcontinental rates should not be made by combination on the rate-break markets.

The north Pacific coast shippers ask for the preservation of present relations from Portland, Huntington, Utah, and southern Idaho, by making from Portland reductions similar to any made from these other territories.

The present parity between Portland and Huntington exists only because of the low rates from Portland. Its continuation by prescribed further reductions from Portland is not warranted. Rates voluntarily established by the carriers to meet competition may not be exceeded at intermediate points. The rate-break combinations will apply on shipments stopped at the rate-break markets.

Eastbound Transcontinental-flour Minimum

During the original hearings herein the minimum carload weight on flour to eastern terminals was 40,000 pounds from southern Idaho and from Montana and points east thereof, and 80,000 pounds from northern Idaho, and from Oregon and Washington. The Part 7 findings prescribed no minimum weight. The 80,000-pound minimum was continued until August 1, 1932, when it was made 60,000 pounds from points on some lines to a limited destination territory. The north Pacific coast mills want the minimum made 40,000, which obtains on shipments over the canal routes. The prescription of a minimum of less than 60,000 pounds is not warranted.

Westbound Transcontinental Rates

For many years westbound transcontinental rates on general traffic have applied to a blanket group embracing all of California, Arizona, Nevada, western Utah, and western New Mexico, an area ranging from 649 to 1,565 miles from

its eastern to its western boundary. These rates apply from extensive eastern origin groups, four of which, groups F, G, H, and J, comprise the territory between the Rocky Moun- [fol. 417] tains and the Missouri River, also Texas and Oklahoma. Group F embraces a narrow strip along both sides of the Missouri River from Sioux City to Kansas City, thence south by air line to the Gulf of Mexico, along the eastern borders of Oklahoma and Texas and the western borders of Arkansas and Louisiana; group H practically all of Oklahoma and Texas except those portions in group F, and a small portion of northwestern Texas in group J; group G substantially all of Kansas, Nebraska, and northeastern Colorado; and group J, the most westerly of the origin groups, embraces mainly Colorado common points (including Cheyenne, Wyo., and Colorado Springs, Denver, Pueblo, and Trinidad, Colo.) and a narrow strip in southeastern Colorado, eastern New Mexico, and extreme northwestern Texas.

For many years prior to August 26, 1920, the westbound transcontinental rates on grain were the same from groups F, G, H, and J. On that date, in compliance with Increased Rates, 1920, supra, rates were increased 25 per cent from group J and 33⅓ per cent from groups F, G, and H; and for the first time the westbound transcontinental rate became 5.5 cents lower from group J than from the other groups. January 1, 1922, in Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, one half of the increase authorized in Increased Rates, 1920, supra, was canceled, and the spread between group J and the other groups became 2.5 cents, and so continued until November 30, 1922, when it became the present difference of 9 cents, by voluntary action of the carriers, in response to a request of Colorado shippers. January 1, 1925, special group G, in northeastern Colorado, was established by the carriers, also at the request of Colorado shippers. The rate from this group was made 4 cents higher than from group J, and 5 cents lower than from groups F, H, and G. On classes and commodities generally the parity of rates from groups F, G, H, and J is still maintained.

In the original report (page 667), in response to the request of Amarillo, Tex., to be placed in group J along with Dalhart, Tex., and contiguous points in Colorado and New Mexico, the finding was reached "that the failure to group Amarillo with Dalhart and other points now in group J

results in rates from Amarillo that are unreasonable and unduly prejudicial." The finding was complied with by a slight enlargement of group J to take in points on the Fort Worth & Denver City between Dalhart and Amarillo; on the Rock Island between Amarillo and Glen Rio, Tex.; and on the Santa Fe between Amarillo and Farwell, Tex. During the period of the reopened hearings in this proceeding tariffs were filed proposing to enlarge group J to include not only the territory specified in the original order, but also much additional territory east of the Fort Worth & [fol. 418] Denver City, and north and east of Amarillo, in the wheat belts of Oklahoma and Texas. Upon protests of shippers in Kansas, Colorado, Texas, Idaho, Oregon, and Washington, the proposed change was suspended in I. and S. 3760, supra, and later found justified, but without prejudice to a different conclusion here. The issue has been again thoroughly presented upon this record.

In the reopened proceeding, Amarillo interests ask for an affirmance of the finding in I. and S. 3760. Shippers in Colorado, Kansas, Idaho, Oregon, Washington, and Montana, also in Texas other than at Amarillo, oppose the finding in that case as preferential of Amarillo and unduly prejudicial to their districts.

In lieu of the existing adjustment Colorado shippers propose an enlargement of the original group J to include all of Colorado east of the Rocky Mountains, and portions of southwestern Nebraska and southeastern Wyoming on the Union Pacific and Burlington from Sterling through Julesburg and Sidney to Cheyenne, and from Sterling north through Northport; also the creation from the western parts of groups G and H of a new group I, to be situated between the remaining groups G and H on the east, and group J on the west, to embrace the southwestern quarter of Nebraska, the western third of Kansas, and the panhandles of Oklahoma and Texas, including Amarillo, from which the rate will be 4.5 cents higher than from group J, and 4.5 cents lower than from groups G and H; the rate to apply to both the north Pacific and south Pacific coast territories. From the present group J the rate is 4.5 cents higher to the north Pacific coast than to the south Pacific coast. The proposal is opposed by carriers and shippers generally as unworkable, illogical, and unduly preferential of Colorado. Shippers other than from Amarillo and Colorado request a restoration of the parity of rates from

groups F, G, H, and J that existed prior to Increased Rates, 1920, supra.

Although it is freely conceded by all parties that, because of competition between the different producing territories, and of rail-and-water routes, distance must be largely disregarded in making transcontinental rates, the presentations of the Amarillo and Colorado interests consist solely of comparisons of distance. To San Francisco and Los Angeles, the destinations of most of the shipments, average distances are shown to range, according to routes, from 1,242 to 1,607 miles from group J; from 1,413 to 1,416 miles from Colorado; around 1,600 miles from groups F, G, and H; and from 1,238 to 1,358 miles from Great Falls, Mont. (from which point the group G basis was prescribed in the Part 7 revision). From group J to Los Angeles the distance over a well-established route through Amarillo, Tex., Ogden, Utah, and South Vallejo, Calif., is shown as 3,217 miles.

[fol. 419] Shippers seeking a restoration of the former parity of rates from groups F, G, H, and J refer to the wide expanse of the destination group, and to the substantial differences in distance over the routes of competing carriers, and contend that a refusal to restore the former parity, because of an additional average distance from a common group of about 200 miles, would be illogical and unreasonable. They see no reason why grain should be excepted from the parity of origin grouping that obtains on other commodities, and they insist that Amarillo and Colorado should not be permitted to further their own interests at the expense of other shippers, and of the carriers, by insisting on mileage where it favors them and rejecting it elsewhere. California is one of the most competitive flour markets in the western district. It is reached by the Santa Fe with its own rails from Colorado, Oklahoma, Kansas, and Texas; by the Great Northern, Northern Pacific, and Milwaukee in connection with Pacific coastwise water lines from Montana, Oregon, and Washington; by the Union Pacific from Idaho and Utah; and by rail routes to St. Louis and the Gulf ports and water routes through the Panama Canal beyond from the Missouri River, Kansas, Nebraska, Oklahoma, and Texas. During the reopened hearings in this proceeding the competition over the rail-and-water route through St. Louis became so intense that the rail car-

riers were compelled to establish, for temporary application, a substantially reduced rate on corn and sorghum grains from all of groups F, G, H, and J to the Pacific coast. These conflicting interests must therefore be harmonized as much as possible if the rate structure is to be stabilized.

Unless the transcontinental blanket adjustment is to be eventually scrapped, and a mileage scale prescribed, which no one advocates, it seems clear that the interests of all parties concerned will be best served by a common rate from the several origin groups. To disrupt this parity, as was done in 1920 in favor of Colorado, and in 1933 in favor of Amarillo, results in an illogical and discriminatory adjustment. For example, Texas interests opposed to the contentions of Amarillo refer to the following situation:

Shipments of grain from points on the Santa Fe from Farwell to Amarillo, and from Farwell to Lubbock, Tex., must move through Farwell to reach California. The distance from Lubbock to Farwell is about the same as from Amarillo to Farwell. Prior to the revision in I. and S. 3760, supra, these points were all in group H, but as a result of that proceeding stations from Amarillo to Farwell were placed in group J with a rate reduction of 9 cents, while stations between Lubbock and Farwell were continued in group H. This made the rate from Muleshoe, Tex., a few miles south of Farwell, on the Lubbock line, 9 cents higher [fol. 420] than from Farwell, and 9 cents higher than from Amarillo and points north thereof in Oklahoma for much greater hauls. Disparities of 9 cents between country shipping points were also created in Texas at Dimmitt in group H and Dawn and Hereford in group J; and at Pullman in group H and Amarillo in group J. It will therefore be seen that the revision in I. and S. 3760, in removing a discrimination against Amarillo created discriminations against other points in Texas and against points in Colorado. It is equally clear that the changed grouping in Colorado prior to I. and S. 3760 discriminated against Amarillo.

A reasonable rate for the future to California will be 65 cents from groups F, G, H, and J; also from the enlarged central Montana group, as described elsewhere herein.

Texas-Oklahoma-Colorado to Arizona and New Mexico

In the original report the transcontinental destination blanket was broken up by grading the rates in Arizona and

western New Mexico on a mileage basis, because of the much shorter hauls than to California, especially from the Amarillo and Colorado districts. In the reopened proceeding Amarillo shippers ask for an affirmance of the original finding, but Colorado shippers oppose it on the grounds that the California terminal rates are water compelled and therefore not unreasonable for shorter hauls to interior points; that a reduction in these interior rates means a further reduction in carrier revenues with no benefit to the producer, whose prices in no way reflect such rates; and that, if Arizona and western New Mexico are to be taken out of the destination blanket, Nevada and western Utah should be taken out of it also.

Mills at Amarillo are in keen competition with mills at Lamar, Colo., for the flour trade of Arizona and western New Mexico. These conflicting interests support their contentions by comparisons of distance. Colorado shippers contend that the average haul from 42 origins on the Santa Fe in the Colorado producing area to Lamar is 20 miles, compared with an average haul from 42 origins on the Santa Fe in the Amarillo district to Amarillo of 84 miles; that from the respective origin groups the through distances over the Santa Fe to points on and west of its line from Belen, N. Mex., to El Paso, Tex., is greater via Amarillo than via Lamar by from 9 to 25 miles; and that therefore the through rates to that territory should be the same from both producing areas. Amarillo shippers state that the average distance of 20 miles to Lamar is the result of the selection by the Colorado shippers of origins a maximum distance of 46 miles from Lamar, compared with their selection of points as far as 220 miles from Amarillo, in reaching the average distance of 84 miles to Amarillo. They also show that to 15 points in western New Mexico, and to El [fol. 421] Paso, average distances over the shortest routes are 351 miles from 6 selected origins in the Panhandle of Texas, and 509 miles from 6 selected origins in Colorado; and that from the same origins to 12 selected destinations in Arizona average distances are 776 miles from Texas and 989 miles from Colorado; and they contend that these comparisons should be reflected in the rates from Amarillo. In computing these distances Amarillo shippers use mileages over the shortest multiple routes, which do not pass through Amarillo, and to New Mexico they include stations in the territory east of the Belen-El Paso line, where Colorado

shippers concede that Amarillo should have an advantage in rates. Exclusion of the latter points, and consideration of the routes through Amarillo, over which the Amarillo shippers ask that the rates apply, would make a showing more favorable to Colorado. On the other hand, a showing by Colorado shippers of average distances to Lamar from all points in the Colorado group, instead of from only nearby points on one railroad, would be more favorable to Amarillo.

Generally speaking, the transcontinental destination group includes all points on the Santa Fe south and west from Domingo, through Belen and Deming, N. Mex., and on the Southern Pacific west and south of Deming. To points in New Mexico on the Santa Fe north of Domingo, and on the lines of all carriers east of the Domingo-Belen-Deming line, including El Paso, the rates are scaled back from the transcontinental-group basis. Points on the Santa Fe north of Belen are closer to Colorado than to Amarillo, and points in the territory east of the line from Belen south to El Paso are closer to Amarillo than to Colorado. El Paso is closer to Amarillo and contiguous points in Texas than to Trinidad and contiguous points in Colorado by an average of 76 miles, but for grouping and rate-making purposes El Paso belongs with points in New Mexico on the line extending north to Belen.

To Arizona and western New Mexico average short-line distances are about 60 miles less from Trinidad than from Amarillo, and from Dalhart and Lubbock, Tex., about the same as from Amarillo; to Arizona on and west of a line from the Grand Canyon south through Williams, Ash Fork and Phoenix to Picacho, including branch lines to Christmas and Silverbell, approximately 840 miles from Amarillo and 790 miles from Trinidad; to points in Arizona east of that line 730 miles from Amarillo and 680 miles from Trinidad; to New Mexico on and west of the line from Belen, to and including El Paso, 430 miles from Trinidad and 490 from Amarillo; and to Trinidad about 200 miles from all points in the eastern Colorado group.

As the distances from Trinidad, Amarillo, Dalhart, and Lubbock are about the same to all destinations in Arizona and New Mexico on and west of the Belen-El Paso line, a [fol. 422] group adjustment based on those four points would seem to be proper. In view also of the shorter hauls to western New Mexico and to Arizona than to California

from Oklahoma, Colorado, and western Texas, some modification of the transcontinental grouping is warranted. From an origin group including roughly all of the panhandles of Texas and Oklahoma, thence on and west of the Missouri-Kansas-Texas from Woodward to Wichita Falls, and the Wichita Valley, Texas & Pacific, and Panhandle & Santa Fe, thence through Abilene, Sweetwater, Lubbock, and Farwell, including branches, rates should be the same as from eastern Colorado. Trinidad should be included in the latter group. From this new Texas-Oklahoma-Colorado group reasonable rates will be 60 cents to Arizona on and west of a line from the Grand Canyon through Williams, Ash Fork, and Phoenix to Picacho, including branch lines to Christmas and Silverbell; 55 cents to Arizona east of the above-described line; and 50 cents to New Mexico on and west of the Belen-El Paso line. The rate of 50 cents should be scaled downward to points north of Belen, and upward to points east of Belen, from Colorado; and downward to points east of Belen, and upward to points north of Belen, from Oklahoma and Texas. Rates from groups east of the Texas-Oklahoma-Colorado group should be related to the rates from that group on a distance basis, subject to the rate of 65 cents herein prescribed from transcontinental groups F, G, H, and J to California, as maximum. The prescribed rates should apply for both single-line and joint-line hauls, and when so applied and graded according to distance will remove the discrimination to eastern New Mexico, on the Rock Island and Santa Fe, complained of herein by shippers in southern Kansas and in central Nebraska. To western Utah and Nevada rates should be graded in the same manner as the rates herein prescribed to western New Mexico and Arizona. From California to Arizona and New Mexico rates not higher relatively than from Amarillo are herein prescribed. The flour minimum will be 40,000 pounds.

In Great West Mill & Elevator Co. v. Panhandle & S. F. Ry. Co., supra, the rates found reasonable on past shipments of grain from origins in the panhandle districts of Texas and Oklahoma to destinations on the Santa Fe in New Mexico east of the Belen-El Paso line were about 28 per cent higher than the Part 7 rates. Complainant there sought reparation to the Part 7 basis, but in awarding reparation on the higher basis it was stated (page 419), referring to the Part 7 basis, that "The record in the instant case indi-

cates that the basis originally prescribed therein is generally too low for application from and to the points here considered." The rates herein found reasonable from transcontinental origins to California, Arizona and New Mexico are slightly higher, generally speaking, than the rates found reasonable in the case cited.

[fol. 423] Utah and Idaho to California

To California and Arizona in Ogden Grain Exc. v. Arizona E. R. Co., 126 I. C. C. 255, 128 I. C. C. 490, 132 I. C. C. 46, reductions were made in the one-factor rates from Utah and southern Idaho, but no finding was made as to rates from northern Idaho, or from Oregon and Washington, which were the combinations on Portland. In the Part 7 revision further reductions were made in the rates from Utah and southern Idaho, and the Portland combinations were continued by the carriers from northern Idaho, and from Oregon and Washington. Rates established by the carriers from Oregon and Washington in purported compliance with the Part 7 adjustment were as much as 17 cents higher than from Utah and southern Idaho for a difference in distance of 105 miles.[47] This relation of rates is not justified. To San Francisco the revised rates herein prescribed from Utah and southern Idaho are on about the same level as the present rates from Oregon, Washington, and northern Idaho, which are herein found not unreasonable. To other points in California and to Arizona, rates from Washington, Oregon, and northern Idaho should not be higher

[47] To San Francisco: From Twin Falls, Idaho, 732 miles, present 45 cents, Part 7, 34.5 cents; from Utah common points, 802 miles, present 46 cents, Part 7, 38 cents; from Pendleton, Oreg., 811 miles, present 44.5 cents, Part 7, 51.5 cents; from Walla Walla, Wash., 837 miles, present 44.5 cents, Part 7, 51.5 cents. The rates from Twin Falls and Utah common points are graded at intermediate destinations. The rates from Pendleton and Walla Walla are not so graded, because based on a rate of 28 cents from Portland, with fourth-section relief. For example, to Weed, Calif., intermediate to San Francisco from Pendleton, but beyond San Francisco from Twin Falls, the rate is 70.5 cents from Pendleton, 625 miles; and 49 cents from Twin Falls, 864 miles. The Part 7 rates to Weed were 51.5 cents from Pendleton and 39 cents from Twin Falls.

relatively than the rates herein prescribed from Utah and southern Idaho.

Routing from Central Montana to California

From central Montana to California the present all-rail rates on grain do not apply over the short routes through Butte, Pocatello, and Ogden, but do apply over routes through Seattle and Portland, as much as 157 per cent of the distances over the short routes, in order to give to the originating lines their long hauls. On flour and various other commodities the rates are applicable over both the short and the long routes.

Montana hard wheat is much in demand for blending purposes by the mills at Seattle, Portland, Ogden, and southern Idaho, all of which are in keen competition for the California flour business. The mills at Ogden and in southern Idaho therefore request the application, with transit, of the through rates on grain from central Montana to California, over the short routes through Butte, Pocatello, and Ogden as well as over the longer routes through Seattle [fol. 424] and Portland, asserting that the latter routes are unreasonably long, and that the right of the originating lines to their long hauls is subordinated to the right of shippers to just and reasonable rates over short routes.

The 75-cent group rate herein prescribed from Montana to Arizona will apply over the short routes through Butte, Pocatello, Ogden, and California junctions, as well as over the longer routes of the originating carriers through Seattle and Portland. The rates from Montana to California will be given similar application.

Routing from Idaho and Utah to California

Present rates from Idaho and Utah to California apply over the route of the Union Pacific to Ogden, the Southern Pacific to Sacramento, and the Western Pacific beyond. The Part 7 rates were established by the carriers to apply only over the route of the Union Pacific to Ogden and the Southern Pacific beyond, or over the route of the Union Pacific to Salt Lake City and the Western Pacific beyond, but not over the route first described. From east of Martha, Idaho, the prescribed rates were published only through Wells, Idaho, and the former higher rates were continued through Ogden. The difficulties resulting from this change are too complicated to detail here. It will suffice to say that

the changed adjustment effectively denied to the Ogden and California mills transit on Idaho and Utah grain. The interested shippers want the rates herein prescribed to be free from these routing restrictions. The present routing will be continued in connection with the rates herein prescribed.

Routing in California

At the original hearings, Los Angeles shippers requested the prescription of rates from Idaho, Utah, Wyoming, and Colorado in connection with the Union Pacific via Los Angeles to points in California as far north as Paso Robles, on the Southern Pacific's coast line, and Fresno on the Valley lines of the Southern Pacific and Santa Fe. This situation was not covered in the original report, and the original request is renewed here.

At the time of the original hearings routing via Los Angeles from these origins was permitted to destinations as far north as Santa Barbara on the coast line, and Mojave on the Valley lines. Subsequent to the issuance of the original report that routing was permitted to destinations as far north as San Luis Obispo on the coast line, and Bakersfield on the Valley lines, from Idaho, Utah, western Wyoming, and western Colorado. From eastern transcontinental origins generally it is permitted to Santa Barbara and [fol. 425] Mojave only. The general situation described is said to prevent Los Angeles shippers from sending mixed carloads of grain from transcontinental and other origins to the Santa Barbara and Mojave territories.

A finding requiring the requested extension of destination territory on shipments via Los Angeles from all eastern territory is not warranted. The destination territory for that routing should be as extensive on shipments from eastern transcontinental territory as on shipments from Utah, Idaho, western Wyoming, and western Colorado.

Transit at San Francisco Bay Ports

Rates from Utah and Idaho to California and Arizona are applicable with transit at San Francisco Bay mills in connection with substantial out-of-line hauls. The Colorado Milling & Elevator Company, which operates mills in Colorado, Utah, and Idaho, complains of an undue preference of the San Francisco Bay mills, arising from their opportunity to substitute flour made from water-borne wheat

for reshipment to California and Arizona at transit balances of the rail rates mentioned substantially lower than the outbound rates otherwise applicable. San Francisco Bay mills deny that substitution is practiced as alleged, and state that to Arizona, for example, more than 90 per cent of their flour shipments are from their mill at Ogden, Utah, despite their possession of more than enough inbound rail billing to cover all of their shipments to Arizona and California. They say that the alleged substitution, even if practiced, would be no more than the usual substitution practiced in connection with the grain and milling business throughout the entire western district. The record affords no basis for an order in respect of the situation complained of.

Rates in California

In the original report reduced interstate rates were prescribed from the San Joaquin and Sacramento Valleys and the coast division of the Southern Pacific in California to San Francisco Bay ports; from the San Joaquin, Sacramento, and Imperial Valleys to Los Angeles; and from the Sacramento Valley to interior California south of Sacramento and San Francisco, including the Imperial Valley. Between other points in California the rates established by the carriers in the Part 7 revision were on the basis of the intermountain interior scale, and in most instances were limited to single-line application. Shippers in southern California object to the use of the intermountain scale and request the prescription of a complete line of interstate rates, on basis of the Pacific coast interior scale, for single-line and joint-line movements between interior points in [fol. 426] California. They assert that joint rates are necessary to move reforwarded shipments from interstate points, because most of the California joint rates are limited to intrastate movements.

The rates in California have been found herein to be not unreasonable. The application of the California rates on both State and interstate traffic is desirable.

Intermountain Territory to North Pacific Coast Terminals and Ogden, Utah

The only point-to-point rates in intermountain territory are from the grain fields to the coast terminals. The other rates are local distance rates. The intermountain shippers

want a continuation of this basis, but a revision of the scale and its relation to the key-point rates. The present rates from Utah and Idaho to Ogden are relatively much higher than from Washington and Oregon to Spokane. Ogden interests ask for the prescription of a common interior scale for these movements. They also want a specific definition of the territory of application of the interior scales, if represcribed. In the Part 7 readjustment the Pacific coast interior scale was applied from eastern Washington and Oregon to western Washington other than the terminals, to which specific key points were prescribed. It was not applied locally in eastern Washington, from western Washington to eastern Washington and Oregon, or from Oregon and Washington to California.

It has been stated herein that interior scales will not be represcribed. From intermountain territory rates to Ogden will not exceed the contemporaneous rates to Spokane for like distances.

Pacific Northwest Transit

The Part 7 adjustment removed a separate transit charge of 2.5 cents in north Pacific coast territory and included two transits without separate charge in the prescribed rates. The carriers are said to have counteracted the effect of this finding by changing the relations of rates. For example, from Connell, Wash., the present rates on wheat are 21.5 cents to Portland, 23 cents to Centralia, Wash., direct, and 25.5 cents to Centralia with transit at Portland. In the Part 7 revision the rates of 19.5 cents to Portland and 23.5 cents to Centralia, with transit at Portland without separate charge, established by the carriers, reflected the former difference of 4 cents between the rate to Portland and the rate to Centralia with transit at Portland. A similar procedure is said to have been followed by the carriers in respect of the establishment of rates under the interior scales to points on the Northern Pacific, Camas Prairie, [fol. 427] Red Collar Line, Spokane, Couer d'Alene & Palouse, Washington, Idaho & Montana, Walla Walla Valley, and Spokane, Portland & Seattle Railways. For example, from Rathdrum to Lewiston, Idaho, the rate without transit was the interior scale rate of 18.5 cents, but the rate with transit at Spokane, Wash., was the Seattle rate of 24 cents applied as minimum. The Pacific Northwest shippers view these adjustments as indirectly making a separate charge

for transit, and ask that the report on the reopened record be made specific in this respect.

The removal of the separate transit charge in this territory, herein required, should not be counteracted by changes in rate relations.

Transit at Tacoma, Wash.

Present Northern Pacific and Great Northern tariffs permit transit at Tacoma on shipments to Seattle, and transit at Seattle on shipments to Tacoma, for all deliveries at final destinations, whether team track, industrial siding, or wharf, for beyond by water. The Part 7 tariffs of these carriers provided for a continuation of these transit arrangements, except that they made the charge on shipments transited at Tacoma for wharf delivery to Seattle for shipment beyond by water 6.5 cents higher than on shipments transited at Tacoma for Seattle deliveries on team tracks or industrial sidings.

Present transit practices at Tacoma as above described should be continued.

Portland, Oreg.

Portland wants the rates from the Big Bend district of Washington made on the basis of the Pacific coast interior scale to Portland and the intermountain interior scale to Seattle, with resulting differentials to Portland of 1 cent over Seattle from group 1, an equality with Seattle from groups 2 and 4, and 2 cents under Seattle from group 3; in lieu of differentials in favor of Seattle of 2.5 cents from groups 1 and 2, 1 cent from group 3, and 3 cents from group 4, prescribed in the supplemental report (page 528). The proposal to use the Pacific coast scale to Portland and the intermountain scale to Seattle is based on the allegation of more costly service to Seattle than to Portland. The granting of the request of Portland is not warranted.

Portland requests rates from Montana through Portland to points north of Everett, Wash., comparable with the present rates from Montana through Seattle to points south of Portland. Present through rates from Montana apply via Portland only as far north as Everett, but apply via Seattle to all points south of Portland. Carrier competition compels application of the rates from Montana via Seattle to Portland and points south thereof, and via Port-
[fol. 428] land to Seattle and Everett, but not via Portland

to points north of Everett. The requested finding in respect of the latter points is not warranted.

Portland asks for the same transit on flaxseed that is now granted at all points in the western district and on shipments from Canada, transited in Canada, and reshipped at balances of through rates to Seattle via Portland, contending that denial of this transit, and the resulting application of full combinations of local rates on Portland, is stifling the flaxseed industry at Portland and the production of flaxseed in Oregon and Washington.

Transit should be accorded on flaxseed at Portland on the basis accorded generally throughout the western district.

Oregon Adjustment

At pages 682-683 of the original report appears the following:

August 29, 1924, Order No. 1131 of the Oregon commission prescribed maximum intrastate distance rates and prohibited increases in lower rates to the scale basis. The joint-line scale was slightly higher than the single-line scale. These scales resulted in reductions from branch lines of the Oregon-Washington and in the joint rates of the Oregon-Washington and Southern Pacific. From main-line points to Portland and other destinations there were few changes in rates, which were already about 13 per cent below the scale. The carriers made the rates inapplicable on shipments stopped in transit. The Federal court issued a temporary injunction against the Oregon commission's order and deferred final action until decision herein, the carriers in the meantime charging the rates and giving bond for any reparation later found to be due.

Prior to order No. 1131 the rates from a part of Oregon, including Bend, were on a common level to Portland, over both the intrastate route of the Oregon-Washington and the interstate route of the Spokane, Portland & Seattle, and on the same general level as from eastern Washington to Portland. Rates to Portland were also the same on domestic and export shipments. That order made the intrastate rates lower than the interstate rates, and lower also than the export rates. More than 90 per cent of the grain shipped to Portland is exported, and a large part of it is billed for export. The Oregon commission contends that intrastate shipments to Portland, though subsequently ex-

ported, are not export shipments, because their destination is not definitely known upon arrival at Portland. The rates prescribed in Appendix D will be reasonable for application over both interstate and intrastate routes and for export.

The Part 7 basis, which was lower than the order 1131 basis, was adopted by the Oregon commission for intrastate traffic, thereby restoring the equality of interstate and intrastate rates that existed prior to order 1131. The Part 7 basis was not canceled intrastate in Oregon when it was canceled for interstate application. The preference of intrastate traffic that began with order 1131 was restored and accentuated as of the date of cancelation of the Part 7 basis interstate and its retention in Oregon intrastate. As a result of these changes certain situations centering around the interstate and intrastate rate levels in Oregon are presented upon the reopened record, to which attention will now be directed.

[fol. 429] Rates to Oregon Points South of Portland

To destinations in Oregon south of Portland the through bases of charge are the combinations of local rates to and from Portland from Montana, Idaho, Washington, and interstate from Oregon, and joint rates lower than the combinations on Portland intrastate from Oregon points north of Portland. This is said unduly to prefer intrastate shippers and unduly to prejudice shippers from interstate points, including Tacoma, Seattle, and Spokane, Wash., and Weiser, Idaho. For example, to Medford, Oreg., the interstate rate from Spokane, on wheat, is the combination of rates of 24 cents to Portland and 28 cents beyond, for a distance of 698 miles, compared with a through intrastate rate from Joseph, Oreg., of 37.5 cents, for a distance of 704 miles, the difference in rate representing the difference beyond Portland between the local rate on the Spokane shipment and the transit balance on the Joseph shipment. The 37.5-cent rate also applies via Pendleton, directly intermediate to Joseph. From Ontario, Oreg., the rate over the interstate route is 59 cents on wheat and 64 cents on flour, for a distance of 761 miles. These rates apply via Weiser, directly intermediate to Ontario. The interstate rate on flour from Ontario via Weiser is therefore 26.5 cents more than from Joseph via Pendleton, for an added distance of

56 miles. The Weiser mills claim to have been effectively shut out of the territory south of Portland because of the preference of intrastate traffic resulting from order 1131, as above explained. A specific order removing the alleged undue preference of Oregon intrastate shipments and undue prejudice to interstate shipments from Weiser and other mills to destinations south of Portland is requested.

Oregon wheat prices are the Portland prices less freight and handling charges, which places all shippers on an equality at Portland, and which is the basis for the interstate shippers' request for through rates, on both intrastate and interstate shipments, reflecting south of Portland uniform additions to the rates to Portland, either in the form of proportional rates, fixed differentials incorporated in through rates or, as suggested by the traffic director of the Sperry Flour Company, perhaps the largest grain and grain-products shipper on the Pacific Coast, constant transit balances. The establishment of through rates, with a constant balance south of Portland, in the opinion of their proponents, would not only place all shippers on a common basis, but would serve the additional useful purpose of recapturing some of the grain and grain-products traffic south of Portland from the trucks.

Portland opposes joint rates less than the full combinations on Portland from eastern Washington and northern [fol. 430] Idaho to Oregon destinations south of Portland, but wants such rates, if established, applied also in the reverse direction.

The following arbitraries, representing weighted-average transit balances on intrastate shipments to Oregon destinations south of Portland, are herein found reasonable for addition to the rates herein prescribed to Portland in the construction of reasonable one-factor through rates: Salem 4, Albany 5.5, Corvallis 6, Brownsville 6.5, Tillamook and Eugene 7, Cottage Grove 7.5, Cushman 9.5, Roseburg and Coquille 10, Myrtle Point 12.5, Grants Pass 14, Medford and Klamath Falls 14.5. The through rates, so constructed should apply also in the reverse direction.

Oregon Export Shipments

On shipments of grain over intrastate routes from Oregon to Portland that eventually go into the export and coastwise trade some of the dealers and exporters at Portland pay the interstate rate on shipments actually exported,

while others refuse to pay other than the lower intrastate basis, on the grounds that the final destination of particular cars is not definitely known upon arrival at Portland; that the identity of the grain is lost in the elevators; and that the shipments must accordingly be viewed as domestic in character.

The shipments in question are billed to consignees at Portland without characterization as to domestic or export. Upon arrival at Portland they are placed on the hold tracks of the carriers for inspection by the State inspection department, and disposition orders are asked of the consignees. While on the hold tracks the cars are in the possession of the carriers and are still in transit. The cars are ordered by the consignees from the hold tracks to the export elevators, from which practically all of the grain is finally shipped in export or coastwise domestic movement. Upon placing the cars at the elevators for unloading the carriers tender freight bills to the consignees for freight charges at the interstate rates. Upon his refusal to pay charges on the interstate basis the shipper furnishes the carrier with a certificate: "I hereby certify that this is an intrastate shipment and is entitled to the intrastate rate." Charges are then accepted by the carriers on the basis of the intrastate rates, and an endorsement is made on the freight bill: "Without prejudice to the rights of either party." The original corrected freight bill is then stamped: "This freight bill is changed and payment accepted by the Oregon-Washington Railroad & Navigation Company without waiving any of its rights to assert and prosecute claims for the collection of the applicable published interstate rate if it be determined that the shipment is moving in interstate or foreign commerce."

[fol. 431] Of the shipments of grain from Oregon to Portland 75 per cent or more are shipped in export or coastwise movement, and practically all of the grain sent to the export elevators is so shipped, as already stated. Nevertheless the contention of the exporters in question is to the effect that the interstate rate cannot be applied unless a shipment is billed through to ship side on an interstate bill of lading, without stop at an elevator and loss of identity of the individual car of grain. This view is not tenable. Mere interruption in transit, and not final delivery, is effected in the hold yards of the carriers. The intention to ship in export or coastwise trade grain that goes into the export elevato:

is continuing and unquestioned. The interstate rate is applicable on shipments in export and domestic interstate commerce upon proof of final disposition in those channels.

Eastern Washington and Western Idaho, North of Snake River, to Portland and Seattle

Rates from the Spokane, Palouse, and Lewiston territory in extreme eastern Washington and northwestern Idaho, north of the Snake River, are now grouped to Seattle and Portland at a rate of 24 cents on wheat for an average distance of 335 miles to Seattle and 364 miles to Portland. In the original report a group rate of 21 cents from these points was prescribed. The southwestern single-line scale is 27 cents for 335 miles and 28 cents for 364 miles. The present rate of 24 cents therefore averages about 87 per cent, and the Part 7 rate of 21 cents averaged 76 per cent, of the southwestern scale rate. The Part 7 group rate was also lower than the Part 7 western trunk-line interior-scale rate for the average distances to Seattle and Portland.

On the Camas Prairie Railroad present Idaho rates to Seattle and Portland are 24 cents from Lewiston; from Peck, on the Stites branch east of Lewiston; and from stations Fort Lapwai to Culdesac, on the Grangeville branch east of Lewiston; and 30 cents from Craigmont, and 31 cents from Cottonwood and Grangeville, on the Grangeville branch beyond Culdesac. The higher rates from Craigmont, Cottonwood, and Grangeville are intended to compensate the carrier for unusually severe operating conditions east of Culdesac, including a sharp grade of 14 miles between Culdesac and Reubens. In the original report the only rate prescribed from stations on the Grangeville branch was a rate of 23 cents from Cottonwood, Craigmont, and Grangeville. In the general revision the carriers established this rate from intermediate stations on this branch from Fort Lapwai to Culdesac, thereby breaking up the grouping of the latter stations with Lewiston and Peck, from which the prescribed rate was 21 cents. In the reopened [fol. 432] proceeding the carriers suggest making the rate from Craigmont, Cottonwood, and Grangeville 2.5 cents higher than from Culdesac.

The present grouping of stations Fort Lapwai to Culdesac with Lewiston and Peck should be continued, and the rate progression over Culdesac from Craigmont, Cottonwood, and Grangeville should not exceed 2.5 cents, and over

Peck, from points on the Stites branch east of Peck, 1 cent.

On the Washington, Idaho & Montana Railway in Idaho the rate to Portland and Seattle is 24 cents, the same as from Lewiston. In the Part 7 revision the carriers made these rates 4 cents higher than from Lewiston and Spokane. The present inclusion of points on the Washington, Idaho & Montana in the 24-cent group should be continued.

Rates to Portland and Seattle are 24 cents from Plummer, on the Oregon-Washington and Milwaukee, and from St. Maries, on the Milwaukee, and 30 cents from Lane, on the Oregon-Washington. The distance from Lane is 30 miles greater than from Plummer, and 10 miles greater than from St. Maries. The difference of 6 cents in rate for the slight difference in distance is not warranted. The rate from Lane should be 24 cents, the same as from Plummer and St. Maries.

From Idaho points on the Great Northern, Northern Pacific, and Spokane International, north and east of Spokane,[48] rates to Seattle and Portland range from 28 to 35 cents, for average distances of 390 miles to Seattle and 447 miles to Portland. The average distance from these points exceeds the average distance from the Spokane-Lewiston group by 51 miles to Seattle and by 80 miles to Portland. The Idaho commission asks that these stations be embraced within a newly created Sand Point group, with a rate 1 cent higher than from the Spokane-Lewiston group. The grading between key points on the basis of 0.5 cent for each 15 miles, subject to the rate from the next more distant key point as minimum, hereinbefore prescribed, will result in a reasonable adjustment of rates from this territory.

The Columbia Basin Differential

For convenience the following discussion of the so-called Columbia Basin Case is reproduced from the original report (page 684-685):

Prior to Inland Empire Shippers League v. Director General, 59 I. C. C. 321, Oregon Public Service Commission v. Director General, 62 I. C. C. 633, rates on grain, with some exceptions, were the same to Portland and Astoria, Oreg.,

[48] Athol, Bonners Ferry, Copeland, Corbin Junction, Coy Spur, Fish Creek, Port Hill, Port Falls, Rathdrum, Sand Point, and Schnoor's.

[fol. 433] and to Vancouver, Seattle, Tacoma, and other Puget Sound ports in Washington, from all points of production in a large section of the Columbia River basin, both north and south of the Snake River, extending roughly from Pendleton, Oreg., on the south to some distance beyond Spokane, Wash., on the north. Astoria is on the south side of the Columbia River, about 10 miles from the Pacific Ocean. Portland is about 100 miles inland from Astoria, on the Willamette River, about 10 miles from its confluence with the Columbia, and about the same distance from Vancouver, on the north bank of the Columbia. Seattle is 183 miles and Tacoma 143 miles north of Portland. Longview, a newer but promising city in southern Washington, is on the north bank of the Columbia River, 39.6 miles north and west of Vancouver. The average distances from all agency stations in the territory of origin mentioned are 372 miles to Seattle and 378 miles to Portland. All of the points mentioned have excellent port facilities for the handling of grain and are in keen competition with each other.

In the report mentioned it was required that from northeastern Oregon and southeastern Washington, south of the Snake River, comprising a small corner of the equalized origin territory described, the rates to Portland and Vancouver should be 10 percent lower than to Puget Sound ports, because of shorter distances and water-level hauls along the Columbia River to Portland and Vancouver, and routes over the Cascade Mountains to Puget Sound ports. The differential was established by increasing the rates 5 percent to Seattle and reducing the rates 5 percent to Portland and Vancouver. From the territory north of the Snake River, from which the distance favored Seattle, no change in the equalization of Portland, Vancouver, and Seattle was required. From the differential territory the average distances over all lines are 269 miles to Portland and 305 miles to Seattle, a difference of 36 miles. The difference is 20 miles on the Northern Pacific and 52 miles on the Oregon-Washington Railroad & Navigation lines.

In Walla Walla County Farm Bureau v. N. P. Ry. Co., 107 I. C. C. 110, decided January 4, 1926, the producers in differential territory contended that the differential tended to reduce competition of Puget Sound buyers, and to reduce prices, but the differential was not disturbed. In this proceeding Puget Sound shippers, the Department of Public Works of Washington, and producers in the differen-

tial area in Washington ask for removal of the differential, or for a suitable differential in favor of Puget Sound ports from the territory north of the Snake River, and nearer to Puget Sound ports than to Portland, if the differential from south of the Snake River is not removed. Some of the producers in the differential area in Oregon oppose the differential, while others do not oppose it provided the rates to Portland are not increased. Portland interests, with some exceptions, and the Oregon Public Service Commission, approve the differential, and want an extension of the origin territory from which it applies. Longview, now on the Seattle basis generally, requests rates not higher than to Portland, because its route is also along the Columbia River, and because its lesser terminal expense tends to counterbalance its additional 40 miles in comparison with Portland and Vancouver. The routes to Longview are higher than to Portland by 5 cents from Oregon-Washington Railroad & Navigation branch-line points in Oregon west of Umatilla; by 2 cents from main-line points Pendleton and west, and from south of the Snake River; and by 3 cents from points in Idaho east of Weiser.

The differential territory is served by the Oregon-Washington Railroad & Navigation Company and the Northern Pacific. The routes to Portland are over the Oregon-Washington, along the south bank of the Columbia; and over the Northern Pacific to Pasco or Kennewick, thence along the [fol. 434] north bank of the Columbia over the Spokane, Portland & Seattle, which is jointly owned by the Great Northern and the Northern Pacific. The routes to Seattle are over the Northern Pacific through Pasco, Kennewick, and Yakima, Wash., over the Cascades; and over the Oregon-Washington through Kennewick to Yakima thence over the Northern Pacific. The Northern Pacific has always been desirous of maintaining the equalization of Puget Sound and Columbia River ports, regardless of the difference in distance and character of haul.

Upon the reopened record this statement of the case is not questioned, and further testimony is not offered by the original parties, but the issue has been reargued.

As a result of the findings in the Inland Empire Cases, the present differential to Portland under Seattle from the described territory south of the Snake River is 2 cents. In the reopened proceeding the Public Utilities Commis-

sion of Idaho and grain growers in the northern part of the State seek the removal of the differential from the territory south of the Snake River. Failing in that, they ask for the application of the differential also from points on the Camas Prairie Railroad, on the north bank of the Snake, from Almota, Wash., to Peck and Culdesac, Idaho, with rates from points beyond related on a distance basis.

The Public Utilities Commission of Idaho contends that the present differential territory is the result of an illogical and arbitrary division of a common producing territory, and that it unduly prejudices Idaho shippers from north of the Clearwater River, which extends easterly to Stites from its confluence with the Snake at Lewiston, and is really a part of the Snake, which turns due south at Lewiston.

As illustrative of the general adjustment reference is made to the relation of rates from Turner, south of the Snake River in differential territory, and from Lewiston, on the east bank of the Snake, in parity territory. The difference in distance in favor of Turner is 40 miles to Seattle and 62 miles to Portland. The difference in rates in favor of Turner is 3 cents to Seattle and 5 cents to Portland. This disparity in rate for the difference in distance is alleged to be unreasonable by comparison with a difference in rate of 2 cents in favor of Portland compared with Seattle, for a difference in distance to Portland under Seattle of 49 miles from the present 18.5-cent group, and 38 miles from the present 19-cent group.

The Idaho commission asks that, if the differential is to be continued from south of the Snake, the alleged discrimination be removed by the creation of a new group, to be known as the "Lewiston group", to include points on the Camas Prairie Railroad from Almota east to Peck and Culdesac, with rates of 19 cents to Portland and 21 cents to Seattle. The Part 7 rates were 21 cents to both ports. From the proposed group the distance to Portland is 28 miles less than to Seattle. Transportation conditions [fol. 435] from the proposed group are substantially similar to those from the present differential territory.

Under the principle announced in the Galveston Case, supra, the relation of rates to Portland and Seattle, on shipments for export and coastwise water movement beyond, is apparently not within our regulation. Nor does the record afford an adequate basis for differentiating, in respect of

the differential, between shipments to these ports locally and for water shipment beyond. The question of port equalization must therefore be left within the discretion of the carriers. Our former finding is therefore modified accordingly.

For the future the relation of rates maintained by the carriers from the present differential territory south of the Snake River, embraced within the order in the Columbia Basin Case, whether a parity or differential basis, will also be maintained from points on the Northern Pacific and Camas Prairie Railroads from stations Pasco, Wash., to Stites, Grangeville, and Headquarters, in Idaho, inclusive. Failure of the carriers to maintain that relation will subject shippers from the last-described territory to undue prejudice and disadvantage, and give to shippers in the present differential territory, south of the Snake River, an undue preference and advantage.

Transit on Mixed Feed in Pacific Northwest

On Montana grain manufactured in transit into mixed feeds and reshipped to the north Pacific coast the through basis of charge is the grain rate when the feed consists wholly of grain and grain products. When the feed contains nontransit ingredients the through basis of charge is the grain rate to the transit point and the class rate beyond, when the transit point is in Montana, and the grain rate to the transit point and the mixed-feed commodity rate beyond when the transit point is in Oregon or Washington. This is because commodity rates on mixed feed, containing nontransit ingredients, are not published from Montana, but are published from Oregon and Washington. They are also published within Washington and Oregon, and between those States and North Dakota. The north Pacific coast feed manufacturers want established throughout all of this territory, on mixed feed containing nontransit ingredients, commodity rates on the grain basis, with transit on the grain portion of the shipment. The record affords no basis for a finding of undue prejudice to the Pacific Northwest feed manufacturers in this situation. On the facts shown the advantage, if any, would seem to be with those manufacturers, in the outbound commodity rates accorded them and denied the manufacturers in Montana.

[fol. 436] California Mixed-Feed Transit

In the original report (page 686) it was shown that millers at Los Angeles could ship their bran, shorts, and middlings, either as such or as ingredients of mixed feeds, on the balance of the through rate on wheat, upon surrender of sufficient inbound wheat billing, but that independent feed manufacturers at Los Angeles could not get the benefit of the transit balance of the wheat rate upon the surrender of sufficient inbound billing either of wheat or bran, shorts, and middlings, because the surrender of wheat billing was limited to millers, and bran, shorts, and middlings were included in the list of outbound but not of inbound commodities. Another complaint was of undue preference of independent feed manufacturers east of Albuquerque, El Paso, and Ogden, on the respective lines of the Santa Fe, Southern Pacific, and Union Pacific, resulting from the inclusion of bran, shorts, and middlings in both the inbound and the outbound list of transit commodities, and from the opportunity afforded to surrender inbound wheat billing in connection with the manufacture of mixed feeds. The finding was that the California independent mixed-feed manufacturers were unduly prejudiced and the millers in California and mixed-feed manufacturers in the East unduly preferred. That finding is here affirmed.

Rail Versus Rail-Ocean Rates to California

On flour from central Montana to California ports, present joint rail-and-water rates are lower than present all-rail rates by 11 cents to San Francisco and by 13.5 cents to Los Angeles Harbor. For years there has been no rail movement of grain or grain products from the Pacific Northwest to California ports. Rates to Los Angeles are higher than to San Francisco over both the rail-and-water and the all-rail routes. The Part 7 adjustment made the rate on wheat and flour from central Montana to all of California 62 cents, without differentiation between the rail-and-water and the all-rail routes. It also made the rate from the some origin territory to north Pacific coast ports 37.5 cents. The transit balance on grain milled at Portland or Seattle and reshipped to Los Angeles or San Francisco under the 62-cent rate was therefore 24.5 cents. The water lines declined to participate in the 62-cent rate, because a lower basis over the rail-and-water route was required to offset the alleged dis-

advantages of shipment over that route. They accordingly established from north Pacific ports rates of 15 cents to San Francisco and 17.5 cents to Los Angeles Harbor. An addition of 11 cents to the latter rate was required for marine insurance, wharfage, handling, and local transportation to [fol. 437] Los Angeles. From central Montana the rail-and-water rate therefore became 9.5 cents lower than the all-rail rate to San Francisco, but 4 cents higher than the all-rail rate to Los Angeles proper. The water lines offer one of three solutions: (1) Joint rail-and-water rates on grain products differentially related to the rail rates, as at present, (2) a fixed differential of 11 cents for the joint rail-and-water rou es under the joint all-rail rates to the ports, in the event of a represcription of a blanket rate to all of California, including the ports, (3) cancelation of all joint rates, over both the all-rail and the rail-and-water routes, and the application of the Portland combinations, using beyond Portland rail rates, prescribed in Pacific Coast Fourth Section Cases, 165 I. C. C. 373, higher by 7 cents to San Francisco, and by a greater amount to Los Angeles, than the port-to-port rates of the water lines, thereby maintaining a constant relation between the rail rates and the rail-and-water rates, regardless of changes in the water rates. One or the other of these adjustments is said by the water lines to be necessary "to foster and preserve in full vigor both rail an ! water transportation," within the meaning of section 1 of the Merchant Marine Act of 1920, and of section 500 of the Transportation Act.

The Pacific Northwest shippers say that extremely low cargo rates of the regular water lines on wheat, compelled by tramp-steamer competition, have enabled the California millers to dominate the California market with flour made from Montana and Pacific Northwest wheat; that the fixed relation between the rail rates and the water rates, suggested by the water lines, would also throw the flour tonnage to the tramp steamers, and force a reduction in the port-to-port rates of the conference lines, thereby giving to the port mills the benefit of the rate being quoted at the moment and leaving to the interior mills only the higher through differentially related rail rates; and that the final result would be to give the tonnage to the water lines and an advantage to the port mills. These shippers further say that the 7-cent differential in favor of the water lines, prescribed in the case cited, is not observed, the water lines

publishing port-to-port rates 5 cents lower than necessary to maintain that relation, and that it would be useless, and unfair to the interior shippers and to the rail carriers, to establish a relation between the rail rates and the water rates that will not be observed.

The mills in the Pacific Northwest, including Montana, are more interested in their rate relations with mills in Utah, southern Idaho, Colorado, Texas, and Oklahoma, than in the rate relation between the all-rail and the rail-and-water routes. Rates from Texas, Oklahoma, and Colorado apply to all of California, similar to the Part 7 adjustment from Montana. The Pacific Northwest millers are apprehensive [fol. 438] that a differential of as much as 11 cents in favor of the rail-and-water routes from Montana to California will require the prescription of a through rail rate much higher than the 62 cents previously prescribed or a rail rate from Montana to north Pacific ports much lower than 37.5 cents. The latter is regarded as too low by mills in Utah, Minnesota, and Montana and by the Southern Pacific. A rail rate from Montana to California higher than 62 cents would put the north Pacific coast mills at a decided disadvantage in competition with the mills in Idaho, Utah, Colorado, Texas, and Oklahoma, unless the rates from these States were also increased, an eventuality not regarded probable in view of the reduction from Oklahoma and Texas to California permitted in I. and S. 3760.

The importance of this adjustment to the water lines operating between the Pacific coast ports is shown by the fact that the volume of grain and grain products moving from the Pacific Northwest to California, approximating 232,000 tons annually, is exceeded only by lumber. Retention of this traffic is said to be vital to the continued operation of the water lines, inasmuch as the northbound cargoes are merely supplementary to the southbound movement. The reduction to 15 cents to San Francisco and 17.5 cents to Los Angeles Harbor in port-to-port rates following the Part 7 revision resulted in a loss of $350,000 in net revenues to two of the larger steamship lines.

The prescription herein of a rate of 65 cents from central Montana to California in connection with the rate of 39 cents from central Montana to Seattle, herein found not unreasonable, will afford the water lines sufficient leeway to maintain appropriate differentials under the all-rail rates.

Pacific Coast Back Hauls

A typical complaint of Pacific Northwest shippers against tariff provisions as to back-haul charges is against the charging, on a shipment from Lind, Wash., east to Spokane and back through Lind to Seattle, under the tariffs filed in the Part 7 revision, of a rate 11 cents higher than the direct rate from Lind to Seattle. The Part 7 rates to Seattle were 17 cents from Lind and 21 cents from Spokane. To the difference of 4 cents in these rates was added 7 cents for the 163 miles from Lind to Spokane and back to Lind. The contention is that, inasmuch as the rate from Spokane to Seattle includes the transportation from Spokane to Lind, the out-of-line charge should have been for only 81.5 miles. The present tariffs contain substantially the same provisions for back-haul shipments as the Part 7 tariffs did. [fol. 439] It is true that the transportation service back from Spokane to Lind is included in the rate of 21 cents from Spokane to Seattle, but it is also true that, except for the out-of-line provision in the tariff, the benefit of the Spokane-to-Lind portion of the haul under the flat rate from Spokane could be had only upon payment of the flat rate from Lind to Spokane, which was 14 cents under the intermountain interior scale. The adjustment here complained of involves a principle of far-reaching importance, and should be condemned only upon a clear showing of justification. Such a showing has not been made upon this record.

Pacific Coast Mixed-Carload Rules

In the original report (page 687), in connection with the complaint in Docket No. 21079 against a rate 3 cents higher eastbound than westbound on rolled wheat between California, on the one hand, and Utah, Idaho, and Wyoming on the other, it was found that the charging of higher rates eastbound than westbound on this traffic was unreasonable and unduly prejudicial. In the revision of their tariffs the carriers equalized the rates in both directions on rolled wheat in straight carloads, but continued eastbound, the old rates on mixed carloads of grain and grain products, including rolled wheat. These rates were as much as 15 cents higher than the revised eastbound rates on rolled wheat in straight carloads. The eastbound shipper of rolled wheat in mixed carloads therefore obtained no benefit from the finding.

The finding in the original report contemplated no differentiation between shipments in straight carloads and in mixed carloads in instances in which a rate equality on the two classes of shipments had been voluntarily maintained by the carriers. The finding in the original report is subject to any modification that may result from the general findings as to transit, mixed-carload rules, etc., made elsewhere herein.

Washington Out-of-Line Hauls on Transcontinental Shipments

In connection with transcontinental grouping under the present rate of 59 cents on corn from South Dakota and the Missouri River markets to the north Pacific coast a back haul from Tacoma and Seattle to points west of the Cascade Mountains (to Sultan, Wash., 56 miles east of Seattle and 96 miles east of Tacoma, for example) is permitted by the Great Northern, without separate charge, but the blanket rate is exceeded to points on branch lines. On other northern lines, little or no free out-of-line service is [fol. 440] permitted, and the group rate is exceeded to branch-line points. On the Northern Pacific and Milwaukee the corn rate of 59 cents is not applicable to Enumclaw, Wash., on shipments transited at Tacoma or Seattle (involving out-of-line hauls of 18 miles via Tacoma and 42 miles via Seattle), but the combinations on Tacoma and Seattle of 66.5 cents are assessed, although the rate of 59 cents, with transit at Tacoma and Seattle, is available on shipments to Cedar Falls, Wash., 39 miles east of Seattle and 59 miles east of Tacoma, involving an out-of-line haul as great as on shipments to Enumclaw. Transit on that rate from Mitchell, S. Dak., to Enumclaw is also permitted by the Milwaukee at Minneapolis, in connection with an out-of-line haul through that market of 571 miles. In connection with the rate of 59 cents out-of-line transit is also not permitted at Tacoma or other Pacific Northwest points by the Oregon-Washington Railroad & Navigation Company, but is liberally permitted at the origin end by the Union Pacific, of which the Oregon-Washington Railroad & Navigation Company is a part. For example, the rate of 59 cents is applicable from Grand Island to Olympia, Wash., with routing east to Omaha and back through Grand Island, involving an out-of-line haul of 288 miles, but the rate from Grand Island to Olympia on a shipment tran-

sited at Tacoma is the combination on Tacoma of 66.5 cents, for an out-of-line haul through Tacoma of 34 miles, and a total distance from Grand Island to Olympia 254 miles less through Tacoma than through Omaha.

In the original report, in respect of shipments to Enumclaw, no undue preference of Minneapolis over Tacoma in the matter of out-of-line service was found, because competitive conditions at the two transit points were shown to be substantially dissimilar, but the suggestion was made that the extension of the boundary of the 59-cent group to include Washington branch-line points would remove much of the disadvantage complained of by Tacoma. In the Part 7 revision the branch-line differentials over the group rate were not removed by the carriers, and the complaint of the Tacoma transit operators is renewed upon the reopened record. Transit at Enumclaw on intrastate shipments in Washington is also requested.

The out-of-line and back hauls in the Pacific Northwest, of which the shipment through Tacoma to Enumclaw is typical, are small when compared with the out-of-line hauls permitted at Minneapolis and Omaha, and in other parts of the western district. The request of the Pacific Northwest shippers in respect of their situation seems reasonable. The group rate will also apply to points on branch lines within the group area.

[fol. 441] Farina and Other Cereals in Pacific Northwest

Farina is the product of the first cracking of wheat in the process of milling. Its only processing after extraction from the mill stream is cleaning and sterilizing with a low degree of heat to kill moth eggs that otherwise would make the product wormy after a few months. Rates on farina are the same as on wheat in western trunk-line and southwestern territories; 7 cents higher than on wheat, minimum 60,000 pounds (the flour basis for shipments with a minimum of 50,000 pounds), from Minneapolis to Portland and Seattle; 7 cents higher than on wheat, minimum 60,000 pounds (the flour basis), from Minneapolis to San Francisco and Los Angeles; and as much as 200 per cent of the wheat rates in the Pacific Northwest.

In the original report a request for the prescription of the flour basis on farina from Minneapolis to the north Pacific coast was denied, and no finding as to the rates on farina and other cereals between other points was made.

In the Part 7 revision the prescribed grain rates, or rates only slightly higher than those rates, were applied by the carriers on certain cereals in the eastern part of the western district, but in the Pacific Northwest there was no change in the rates on cereals, including farina, which continued on a basis higher than the grain rates, and without transit.

Minneapolis, contending that farina is merely a coarse flour, asks for the prescription of the flour basis. The north Pacific coast millers feel that farina and other cereal-food preparations might properly take higher rates than grain and flour, but have no objection to the equality of rate on farina and flour, as suggested by Minneapolis. They do insist, however, upon uniformity both as to rate relation and as to transit, in respect of these commodities throughout the entire western district.

The Pacific Northwest millers also regard as unwarranted the difference in treatment in their territory from that accorded in the East in respect of the rates on rolled oats. The rate charged on oats from a point south of Portland to Boise, Idaho, when milled into rolled oats at Portland, is 60 cents, the combination on Portland, in the absence of through rates with transit for cereal manufacture on the north Pacific coast lines. The rate on oats from Nebraska to Boise, milled into rolled oats at Omaha, is the through oats rate of 57 cents. Distances to Boise are 419 miles from Portland and 1,293 miles from Omaha. During the period of the Part 7 adjustment the rate on rolled oats from Los Angeles to Phoenix, Ariz., was the cereal rate of 66 cents for 485 miles, compared with the grain rate of 26 cents on rolled oats from Kansas City to Lamar, Colo., for 487 miles, over the Santa Fe in each instance.

[fol. 442] The general question of the relation of rates on grain and cereals is discussed elsewhere herein.

Flaxseed

The production of flaxseed in the United States has varied from 31,547,000 bushels in 1924 to less than 10,000 bushels in crop-failure years. More than 95 per cent of the production is in the four northwestern States of Montana, North Dakota, South Dakota, and Minnesota. North Dakota and Minnesota produce about 75 per cent of the total crop. Upward of 80 per cent of the production moves to Minneapolis and Duluth, for crushing into linseed oil and meal at Minneapolis and for shipment out over the lakes

to Buffalo, Chicago, Milwaukee, Cleveland, and Toledo from Duluth. The demand for flaxseed in the United States exceeds the domestic supply by more than 50 per cent. The deficiency is made up by importations from Canada, India, and the Argentine. The movement of Canadian imports is usually over the lakes to ports on Lake Michigan and Lake Erie. The movement of flaxseed from India and the Argentine is mostly to the crushers on the Atlantic seaboard, which use very little domestic flax.

The rates on flaxseed are 112 per cent of the wheat rates in the main producing States of Montana, North Dakota, South Dakota, and Minnesota, and the same as the wheat rates from Oregon, Washington, and northern Idaho to Portland, the only point on the Pacific coast with a flaxseed industry.

In the Part 7 revision the rates on flaxseed were made 112 per cent of the contemporaneous rates on wheat in the following finding:

Montana and other interests ask that rates on flaxseed be made uniformly 2 cents higher than rates on wheat, in lieu of 112 per cent of the wheat rates, prescribed in South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 107 I. C. C. 35. A reversal of the above finding is not warranted.

Interpreting the above finding to require 112 per cent of the wheat rates on flaxseed only in the territory embraced within the complaint in the case cited, the carriers in the Pacific Northwest canceled all commodity rates on flaxseed between certain points in Oregon and Washington and made applicable class rates as much as 277 per cent of the prescribed grain rates. To and from Fredonia, Kans., an important flaxseed-crushing point, the rates on flaxseed established by the carriers in purported compliance with the Part 7 findings exceeded the interior-scale rates for that territory by more than 12 per cent.

The flaxseed interests contend that the maintenance of rates on flaxseed and its products (meal and cake) higher [fol. 443] than on wheat and its products is stifling the production of flaxseed, which nets to the producer a price less than on wheat after payment of freight on the dockage content of the shipment (weeds, dirt, and other foreign worthless substances) which amounts to 15 per cent on shipments of flaxseed, compared with 5 per cent on shipments of

wheat. They further contend that general conditions affecting the transportation of flaxseed are on the whole as favorable as those affecting the transportation of wheat. They concede that the value of flaxseed is from 135 to 140 per cent of the value of ordinary wheat, but assert that the values of flaxseed and wheat as a whole will not substantially differ when the premium wheats of high protein content are also considered. They urge that flaxseed loads as heavily as wheat and has fewer claims for loss in transit, and that the shipper lines the flaxseed car with paper and cloth at his own expense, whereas the carriers furnish grain doors, without separate charge, for shipments of wheat. They therefore request the prescription of rates on flaxseed not higher than the contemporaneous rates on wheat; also rates through Fredonia not higher than through Kansas City and other important markets. Upon the original record their request was for rates on flaxseed 2 cents higher than on wheat.

The original finding that rates on flaxseed shall not exceed 112 per cent of the contemporaneous rates on wheat is adhered to, this basis to apply throughout the entire western district.

Farm and Field Seeds

In the original report (page 666) the flaxseed basis of rates was prescribed on some farm and field seeds [49] and the grain basis on others.[50] The prescribed rates were established by the carriers except in intermountain territory and on transcontinental shipments.

Upon the reopened hearing the carriers urge that seeds are much more valuable and lighter in loading and volume of movement than grain, and that the general conditions affecting the two classes of traffic are substantially dissimilar. The value of some of the seeds, such as some of the clovers and alfalfa, is as much as 15 cents a pound. The loading is only about half that of grain. The carriers urge, therefore, that rates on seeds be left to their discretion to adjust as circumstances may demand; also that in any event the flaxseed basis should not be prescribed on any

[49] Velvet beans, soy or soy beans, castor beans, cane, kaffir corn, milo maize, sorghum, sudan grass, wild mustard, vetch.

[50] Broomcorn, alfalfa, lucerne, sweetclover, hemp, rape, sunflower, timothy, millet, grass.

seeds in California, Arizona, New Mexico, southern Oregon, western Utah, and in Nevada, because flaxseed is not grown in those States. The seed interests suggest rates on the [fol. 444] basis of 125 per cent of the wheat rates for the highest valued seeds, 112 per cent of the wheat rates for seeds of the next highest value, and the wheat rates for seeds of the lower values.

Sweetclover, but not other clovers, was covered by the original order. The carriers contend that all clovers are alike for transportation purposes, and that all clovers or none should be embraced within the order in the reopened proceeding; also that sweetclover should be restored to the class basis along with the higher-priced clovers. They refer to several cases, decided both prior and subsequent to the Part 7 revision, in which class D rates were found reasonable for sweetclover throughout substantially all of western trunk-line territory, and ask that not only all the clovers, but many of the other seeds of similar nature covered by the original order, be restored to the class basis.

The greater value, lighter loading, wider diffusion of movement, and substantial differences in general transportation characteristics of seeds, compared with wheat, developed upon the reopened record, do not warrant the findings as to seeds in the original report, which are accordingly rescinded and the rates on seeds left for further consideration upon appropriate records in other proceedings. The findings as to seeds in past cases are not affected by anything here said.

Export Rates

In the original report export rates were prescribed as follows:

	Present Cents	Part 7 Cents
Omaha to Texas group 3	24.5	21
Kansas City to Texas group 3	23.5	21
Omaha to Montreal	31.5	[1]
Kansas City to Montreal	31.5	[1]
Omaha to Baltimore	38.5	31
Kansas City to Baltimore	38.5	31
Omaha to New Orleans	24.5	27
Kansas City to New Orleans	23.5	21
St. Louis to Baltimore	25	22
St. Louis to New Orleans	11	14
Chicago to Baltimore	21	16
Central Illinois to Baltimore	32.5	27.5
Central Illinois to New Orleans	22.5	25.5

[1] The reduction from 17.5 cents to 15 cents in the proportional rate from Kansas City and Omaha to Chicago in connection with lake charges (including elevation and handling charges) of 14 cents beyond resulted in a through charge of 29 cents from Kansas City and Omaha to Montreal.

The general plan of the revision was to make the rate from Kansas City to New Orleans the same as from Kansas City to Galveston, thereby equalizing the two ports; the rates from Omaha to Galveston and New Orleans by combination on Kansas City; and the rates to all the ports [fol. 445] not only on reasonable maximum bases, but in reasonable relations from St. Louis and central Illinois to New Orleans and Baltimore, from Omaha and Kansas City to New Orleans and Montreal, and from Omaha and Kansas City to Baltimore and Montreal.

Upon the reopened record the carriers east of Chicago propose the prescription of a one-factor through export rate from the Missouri River markets to Baltimore and other north Atlantic ports 8 cents less than the rate-break combination on Chicago, conditioned, however, on (a) its limitation to grain, without milling in transit; (b) an apportionment to the carriers west of Chicago of 3.5 of the 8 cents shrinkage under the combination basis; (c) the charging by the carriers west of Chicago on shipments to Chicago or other Lake Michigan port, for lake transportation beyond to the East for export, of a proportional rate higher than their division of the proposed overhead through rate.

The southwestern carriers propose an export rate from Kansas City to Galveston 5 cents less than the domestic rate, to meet the competition of shipments from St. Louis to New Orleans over the barge lines.

The Texas ports, but not other Texas interests, request export rates lower than domestic rates.

Since the issuance of the original report the export movement of grain has progressively declined, until today there is very little export movement, and the Supreme Court, in the decision in the Galveston case, supra, has denied our authority to prescribe relations of export rates to the ports.

The record affords no adequate basis for the prescription of rates lower on export than on domestic shipments. In view of the decision in the Galveston case, relations of rates to the ports will not be prescribed, but the relations resulting from the rates prescribed in the original report are suggested for consideration of the carriers in connection with any voluntary equalization or partial equalization of the ports.

Ex-Lake Rates from Buffalo

In the original report (page 691) no order was entered in respect of the ex-lake rates from Buffalo to eastern ports, but the carriers were left free to establish any lower rates necessary in their discretion to compete with other export outlets. Subsequent to the issuance of that report the carriers from Buffalo to the East made substantial reductions in the rates on both wheat and flour, as emergency rates to expire on a given date. The finding in the original report as to these ex-lake rates is affirmed.

[fol. 446]

General Findings

We find that the present rates for the interstate transportation of wheat and coarse grains and their products are unreasonable and unduly preferential and prejudicial to the extent they exceed the rates prescribed in the appendix hereto, to be applied in accordance with the discussion and findings as to rate break, relation of commodities, transit, etc., herein previously set forth.

We further find that the present rates for the interstate transportation of grain and grain products from origins not included in the appendix to the destinations shown therein are unreasonable and unduly preferential and prejudicial to the extent they exceed rates made with reasonable relation to the rates from neighboring key points specifically prescribed in the appendix.

Reasonable groupings of origin and destination points will be permitted.

We further find that the present rules, regulations, and practices affecting the interstate transportation of grain and grain products throughout the affected territory are unreasonable and unduly preferential and prejudicial to the extent they fail to conform to the findings herein.

The findings in the original report as to fourth-section relief, outstanding orders, reparation, and the relation between interstate and intrastate rate levels are equally pertinent here and for ready reference are reproduced.

Fourth-Section Relief

No fourth-section applications were set for hearing with this investigation, nor did the carriers request additional relief in that respect. Some of our findings herein will, however, require additional fourth-section relief, and to take

care of such situations the following, approved in our report in Consolidated Southwestern Cases, 123 I. C. C. 203, page 403, is reaffirmed:

Our findings herein will be understood to require establishment of the prescribed rates over the direct routes. The defendants may file applications for such relief from the long-and-short-haul provision of the fourth section as they may require in connection with the rates prescribed. In instances in which such applications are filed within 90 days after the date of service of this report consideration will be given to the entry of orders granting temporary relief to aid establishment of the rates herein prescribed or approved and applying on the traffic embraced in such applications, and to maintain such rates until final action upon said applications.

As to Outstanding Orders

Outstanding orders inconsistent with the findings and order herein will be modified accordingly.

[fol. 447]

Reparation

Some of the complaints consolidated for hearing on this record ask for reparation. Other complaints were filed during the pendency of this proceeding and submitted, without separate hearing, for determination on this record, but with a reservation of the issue of reparation. The revision herein made is mainly of the relations of rates, in the removal of undue preferences and the promotion of uniformity of rate levels under substantially similar transportation conditions. The rates covered by these complaints have not been shown to have been inherently unreasonable, in the past, under section 1 of the Interstate Commerce Act.

Interstate Versus Intrastate Levels

An important issue is the relation between interstate and intrastate rates. The complaints of discrimination against interstate shippers have been numerous. The desirability of uniformity in rate levels in the same general territory, for both interstate and intrastate shipments, is apparent. Instead of any reasonable approach to this uniformity there is a wide disparity between not only interstate and intrastate levels, but between intrastate levels themselves, as the

following table of rates for representative mileage blocks will show:

	100 miles Cents	200 miles Cents	300 miles Cents	400 miles Cents
Arkansas	14.5	20.5	23.5	23.5
Oklahoma	14.5	20	24	27.5
Texas	15	20	25	33
Kansas	13.5	19	20	23
Missouri	13.5	19.5	22.5	23.5
Iowa	12	16	20	24
Illinois	13	16.5	19.5	....
Wisconsin	18	26	29.5	33
Minnesota	12	14	16	17.5
Nebraska	16.5	22.5	25.5	27.5
South Dakota	[1] 13.5	19	24	27
Do	[2] 15.5	22	27.5	31
North Dakota	13	18	23	25.5
Montana	16.5	23.5	27.5	30.5
Wyoming	15	20	25	29
Idaho	19.5	34	36	39.5
Oregon	15.5	20.5	25.5	30.5
Washington, coast	13	18.5	24	[3] 26
Washington, interior	16.5	27.5	....	....
15026 scale	16	22	27	31

[1] East of Missouri River. [2] West of Missouri River. [3] For 350 miles.

It will be assumed that not only generally in the interest of substantial equality among all shippers, but in accordance with the spirit of cooperation every effort will be made by the State commissions to achieve the maximum of uniformity in interstate and intrastate levels. Upon this as- [fol. 448] sumption an opinion has been expressed herein upon certain of the intrastate adjustments in Oregon, California, Texas, and perhaps other States.

LEE, Chairman, concurring in part:

This general investigation, instituted in compliance with the direction of Congress as expressed in the Hoch-Smith resolution, was intended to bring about as speedily as possible a reasonable, nondiscriminatory, and nonprejudicial grain-rate adjustment throughout the western district and from that district to all ports of export, and, in that way, to promote the freedom of movement of the products of a severely depressed branch of agriculture. The removal of all unlawful features in the existing adjustment of rates from all points of production to the markets at which the farmers sell their grain was of first importance. Although unsatisfactory to me in a number of respects, the revised rate structure prescribed in our original report herein to a large extent reasonably accomplished the purpose of the

investigation, and I, therefore, concurred in the adoption of that report.

Our original order of reopening, following the decision of the Supreme Court in Atchison, T. & S. F. Ry. Co. v. United States, 284 U. S. 248, very properly restricted the further hearing to a showing of changed conditions since the closing of the record in 1928. Our subsequent action, of which I disapproved at the time, in removing the restriction and reopening the proceedings on all issues has resulted in unnecessary and prolonged delay in correcting defects in the rate structure without, in my opinion, adding anything of material value to what would otherwise have been an entirely adequate record.

The new rate structure prescribed in the instant report is in two important respects highly objectionable.

First, it will not place the several grain-producing sections of the western district on a properly related basis. The rates prescribed for application in the Southwest range from 30 per cent, for hauls of 800 miles, to 50 per cent, for hauls of 100 miles, higher than those prescribed for application in western trunk-line territory. And a somewhat higher basis is prescribed for application in parts of Mountain-Pacific territory. Transportation conditions do not warrant this difference in rates. A rate level in the Southwest and in California, and from Oregon, Washington, and northern Idaho to north-coast cities, about 10 per cent higher, and in the remainder of Mountain-Pacific territory about 15 per cent higher, than in western trunk-line territory would give ample recognition to differences in transportation conditions which affect the movement of grain and [fol. 449] grain products. Grain is highly competitive; every bushel grown in one section is in keen competition with that grown in other sections of the western district. This competition requires as near an equality of rate levels as transportation conditions in the several sections of the western district will permit. In Livestock—Western District Rates, 176 I. C. C. 1, 190 I. C. C. 611, in dealing with another basic agricultural product, livestock, we gave controlling weight to a similar competitive situation. We there prescribed rates for application in southwestern territory on the same level as, and rates for application in Mountain-Pacific territory about 10 per cent higher than, those prescribed for application in western trunk-line territory. A flat increase in the rates prescribed in our original report

in an amount sufficient to produce the part which grain and grain products should reasonably bear of the revenues necessary to enable the carriers to furnish adequate and efficient transportation service would result in a much fairer rate level than that prescribed in the instant report.

Second, too much weight is accorded the competitive interests of the grain markets and grain dealers and too little consideration is accorded the rates the producer is compelled to pay to the markets at which he sells his grain. The report states in one place that the—

narrowing from 4 cents to 2 cents of the advantage of Kansas City over Omaha to St. Louis necessitates a corresponding narrowing by 2 cents of the advantage of Omaha over Kansas City in the inbound local rates from the South Platte. This has been accomplished by increasing 1 cent to Omaha and reducing 1 cent to Kansas City the inbound local rates prescribed in the original report.

Thus the measure of the rates which the South Platte farmer is compelled to pay to the markets at which he sells his grain is subordinated to the competitive interests of the markets. This subordination of the interests of the farmer is evident throughout the entire report. The result is that the local rates prescribed to the primary or rate-break markets are relatively too high and the proportional rates between the markets are relatively too low. For example, from Flagler, Longmont, Sterling, and other points in eastern Colorado grouped therewith to Omaha and Kansas City, an average distance of 565 miles, the prescribed rate is 26 cents, while from Omaha to Duluth, Chicago, and St. Louis, 497, 487, and 414 miles respectively, the prescribed rates are 16, 15, and 13 cents, and from Kansas City to Duluth, Chicago, and St. Louis, 634, 451, and 277 miles respectively, the prescribed rates are 22, 15, and 11 cents. From Yates, Mont., to Minneapolis, 620 miles, the prescribed rate is 31 cents, while from Minneapolis to Chicago and St. Louis, 409 and 573 miles respectively, the prescribed rates are 12 and 15 cents. From Northwood, N. Dak., to Chicago, [fol. 450] 615 miles, the prescribed rate is 31 cents, while from Chicago to New Orleans, 908 miles, the prescribed rate is 25 cents. From Aberdeen, S. Dak., to Sioux City, 266 miles, the prescribed rate is 17.5 cents, while from Sioux City to Minneapolis, 267 miles, the prescribed rate is 8.5 cents. From Estherville, Iowa, to Minneapolis, 156 miles,

the prescribed rate is 13.5 cents, while from Minneapolis to Duluth, 150 miles, the prescribed rate is 4.5 cents. From Sheldon, Iowa, to Omaha, 181 miles, the prescribed rate is 14 cents, while from Omaha to Kansas City, 196 miles, the prescribed rate is 6 cents. From North Platte, Nebr., to Kansas City, 426 miles, the prescribed rate is 24 cents, while from Kansas City to Chicago, 451 miles, the prescribed rate is 15 cents. From Sayre, Okla., to Kansas City, 452 miles, the prescribed rate is 27 cents, while from Kansas City to Chicago, 451 miles, the prescribed rate is 15 cents.

I do not wish to be understood as minimizing the importance of a proper rate adjustment between the markets but, I submit, the interests of the producer are entitled to as much consideration as is accorded the interests of the dealers and the markets. There may be some question about how far from his fields the producer pays the freight for the movement of his grain, but there is, in my opinion, little, if any, doubt that he pays it to the primary market. The new adjustment places too small a part of the transportation burden on the movement out of the markets, to the substantial advantage of the grain dealer, and too much of the total transportation burden directly upon the farmer who grows the grain.

Another objectionable feature of the new adjustment is that it fails to affirmatively require equalization of rates from the Columbia Basin to the north-coast cities. In refusing to require equalization of these rates the majority rely upon the Supreme Court's decision in the Galveston case. That decision relates solely to the standing of the ports to complain under section 3 of the act of rates on traffic passing through them. It in no way removes or limits the protection afforded by section 3 to interior producers and shippers. This the majority expressly recognize in dealing with the rate-break market combinations. Equalization of rates from the Columbia Basin would, in any event, be warranted under section 1 of the act. Such equalization should be required.

Although highly objectionable in the important respects above referred to, the new adjustment is in other respects a decided improvement over the existing adjustment. The maintenance of the same rates on flour and wheat, provided in both our original and the new adjustment, will result in an equality of treatment in this respect throughout the western district and in the elimination in certain sections

of that district of existing rate obstacles to the natural loca- [fol. 451] tion and development of mills adjacent to the grain fields. The limitations on transit practices and out-of-line and back hauls will result in the elimination of much wasteful transportation and in placing some of the burden of transit costs where it belongs. The equalization of rates from Utah and a part of southern Idaho to the north-coast cities is a step in the right direction but does not go far enough. Such equalization should be made to apply from as far west as eastern Oregon, even without equalization from the Columbia Basin.

The correction of these and other defects in the existing rate structure has my approval.

PORTER, Commissioner, concurring in part:

In an adjustment of rail rates extending over a territory as vast as the one in this proceeding, including within its scope all wheat and coarse grains and their products, which are by far the most important articles produced in this extensive territory, and involving many wide general situations and a multitude of lesser special ones, it is remarkable that any two persons could agree on the more important matters involved, let alone all that is to be found in this report. If a majority of a body of 10 members is to adopt findings in a matter of such magnitude, it necessarily follows that they must come to agreement on the most important and forego individual opinions on those less vital.

While this report is far from what I would desire in a number of particulars, I believe on the whole it will bring about a much better adjustment than the one now in effect. It is just to a much greater number and fraught with far less discrimination and preference than the existing one. I am in accord with the reductions, where made, in the flat or gathering rates to the primary markets. All are agreed upon this record that those rates are borne by the producers, however much there may be differences of opinion as to who bears the rates beyond the markets. In a number of particulars, however, I find myself in disagreement with the majority, and a brief mention of some of the most important seems to me to be warranted.

For the first time in the history of this Commission it is by affirmative action placing coarse grains on the same rate level as the much more valuable wheat and flour. Forty-four years ago, following a custom already prevailing

among the railroads, this Commission fixed a differential of 15 per cent, coarse grains under wheat and flour. With the exception of a brief period during and following the World War, some differential has existed ever since. But now, with no particular insistence and against the vigorous protest of many of the coarse-grain States, the majority [fol. 452] here decree that relatively cheap oats and expensive flour shall pay the same fare when riding on the rails. We are thus overruling not less than a dozen of our prior cases decided over a period of almost half a century. There is nothing in this record to cause me to change my views on that subject as quite fully expressed when this case was before us originally, 164 I. C. C., at page 738.

The majority again approve free transit at two stops and a charge of 2 cents per 100 pounds for each additional stop. I am committed to the doctrine that a special service of value to the shipper and of expense to the carrier, enjoyed by only a portion of the shippers, should be paid by those who use it and the cost borne by them and not by the shipping public generally. My reasons for this view are set out in my prior concurring expression, supra, and need not be repeated here.

It is also to be regretted that we are here doing so little to correct the flagrant abuses under the so-called mixing and unit rules used in connection with free transit. It is one of the most inexcusable and wilful wastes of carrier revenues that has come to my attention during my service upon this Commission. I am at a loss to understand why, at a time when many of our western carriers are already in bankruptcy and others on the brink, they themselves do nothing to remedy this situation, even without our compelling hand. For a striking illustration of this practice, see my former concurrence, 164 I. C. C., at page 743.

I am not at all satisfied that the adjustment here approved affords all of the relief to which the farmer is entitled, and that it does not afford to the interior market greater relief than it is entitled to. This investigation was instituted under the Hoch-Smith resolution, which had for its primary object the relief of the farmer, and that was one of the chief purposes which motivated the institution of this proceeding. I am fully aware the Supreme Court has told us that the resolution mentioned added nothing to our power under existing law. However, I do not understand that the policy thus declared by Congress and unrepealed

is lacking entirely in vitality. The adjustment prescribed in this report favors the grain markets much more than it does the farmers, in that the proportional rates out of the markets are generally reduced in substantially greater amounts than the flat or gathering rates from the country shipping points to the markets. It is the latter rate which the farmer admittedly pays and with which he is primarily concerned. As an illustration of what this report does, the Kansas City southbound proportionals to Little Rock, Texarkana, Memphis, Texas and Louisiana groups 3, and New Orleans are reduced on the average from 31 to 22 cents, or 29 per cent. In contrast, the flat rates on wheat and coarse [fol. 453] grains from Kansas to Kansas City and from Nebraska to Omaha set forth as representative in the appendix to the report, are to be reduced on the average only from 17.6 to 15.6 cents, or 11 per cent. This average rate of about 15 cents is to apply for an average inbound haul of only about 200 miles, whereas the average Kansas City proportional of 22 cents is to apply for an average outbound haul of about 622 miles. For that same distance the rate under the interior southwestern scale determined in this report to be reasonable maximum is 38.5 cents. Thus, by reason of their proportional nature the majority determines that the outbound Kansas City rates are entitled to a reduction below the flat basis of 43 per cent. I cannot agree to any such reduction in the revenues of the carriers for the chief benefit of the markets. Certainly the least that should be done is accord the grain producer a percentage of rate reduction no smaller than is accorded to the market, and this could be accomplished, generally speaking, by reducing the inbound flat rates to a greater extent and the outbound proportionals to a less extent than does this report. If this were done it would not only go a long way in affording the relief to which I believe the farmer is entitled on this traffic, but it would go most of the way in solving a difficult problem which is bound to be precipitated by the unbalanced adjustment prescribed in this report, namely, the problem of dividing as between the inbound and outbound carriers the reductions in the through rates herein required.

FARRELL, Commissioner, concurring:

I concur in this report because I believe the rates therein prescribed for transportation between points of origin and

points of final destination in the United States, in view of present transportation conditions, are reasonable and fairly well related and for the further reason that I understand the manner in which the through rates are divided from and to so-called market and other transit points is, generally speaking, in accordance with action heretofore taken by the defendant carriers and with present demands, as shown by the record in this case, of shippers and consignees and other parties directly interested in the transportation of grain and grain products. If this general readjustment proves to be erroneous in some particulars, such errors can of course be corrected in comparatively inexpensive proceedings in the future.

MAHAFFIE, Commissioner, concurring:

This proceeding is of such size and complexity and presents so many issues that the treatment of many of them must necessarily be unsatisfactory to some of those voting [fol. 454] for the report. If each insisted on his views, no decision could command a majority. To me, the important consideration here is that the new structure appears, on the whole, a great improvement over that now in effect. This has seemed so important that I have been willing to overlook features of the report which, if considered individually, I would want to dispose of in a different way.

MILLER, Commissioner, concurring in part:

With the general scheme of the readjustment provided by the majority report I am in accord, but the general level of the prescribed adjustment, resulting in substantial reduction in the aggregate revenues of the carriers as a whole, is in my judgment too low. I am also of the opinion that the proportional rates from the rate-break markets have been too greatly reduced, and that necessary reductions in the components of the rate-break combinations should, to the fullest possible extent, be made in the local rates to the rate-break markets. It is these latter rates in which the producer is more directly interested, inasmuch as his country price represents the market price minus the freight and handling charges to the market. It is my impression that the reductions in the proportional rates inure primarily to the benefit of the grain dealer at the market or to the consignee, and that any benefit to the farmer, in the way of an effect upon the market price, is rather remote.

AITCHISON, Commissioner, dissenting:

The manner of approach to the issues adopted in the report does not persuade me as to the correctness of the results reached, and I therefore regretfully dissent from the conclusions reached. The report first determines the reasonable rates from and within western trunk-line territory, upon bases which seem to me to give undue weight to the commercial and marketing elements of the case, and not enough to the usual tests applicable in rate making. From the base so determined the report reaches by relation a structure of rates in the Southwest, which, it is my opinion, is unduly severe upon that section. The rates in the Far West are then related to those from the Southwest, and reflect the cumulated infirmities of the two preceding steps. There are minor inconsistencies in the rate structure which stand out, and these suggest the need for thorough check of the whole system of point-to-point rates prescribed.

A better method would be to consider these great territories independently, upon the basis of their own separate transportation and commercial conditions.

I am still of the opinion that this differential between coarse and other grains where now existing should not be removed: 164 I. C. C. 745.

[fol. 455] The report fixes maximum rates only, leaving the carriers free within the limits of the law to make reductions for competitive or business reasons. This is as far as it is desirable to go in a proceeding of such magnitude as this; but it is not a compliance with the requirements of the Hoch-Smith resolution under which the proceeding is brought, which contemplates a readjustment of rates and redistribution of burdens of charges, and not merely the fixation of maximum rates. The mandate of the Hoch-Smith resolution has, by reason of the increase in competition with other forms of transportation, now become impossible of performance, and it would be unfortunate if compliance were possible. The remedy lies with Congress.

I take no part in the determination of the so-called Columbia Basin differential controversy.

TATE, Commissioner, dissenting:

There are other matters contained in the report herein of which I do not approve, but I do not regard any of the others as being so serious as to prevent my making this

expression a "concurring" or a "concurring in part" expression; and hence, for the sake of brevity, I only refer to that matter the inclusion of which I regard as so serious as to cause me to feel constrained to dissent. I refer to the application of the "rate-break" principle. This doctrine of the rate break and its application pervades the entire report. The method of applying this rate break I disapprove, and because the report includes the method, I dissent from the report and its adoption.

Certain "primary markets" are recognized or created, and rates from localities of production are made over these primary markets to other markets or destinations which are broken over the primary markets. It is my opinion that the total rate is broken over these primary markets without proper regard for cost of transportation or other conditions of transportation, as to one factor of the haul, as compared with the other factor of the haul. There may be a rare exception, but practically always the charge for that factor of the haul from the locality of production to the primary market is very much larger, mile for mile, and by any other method of comparison, than is the charge for that factor from the primary market to destination. If certain cities are to be recognized or created as primary markets and there is to be a compulsory rate break at all, I do not believe that this method, of making the factor from the locality of production to the primary market so much the more expensive factor of the transportation, is correct as a matter of economics, and furthermore, I believe that the charge for the factor from the primary market to destination is made so low as to be entirely out of proportion and in some instances so low as to be dangerously near the point of being not compensatory and almost confiscatory. To explain [fol. 456] what I mean by the expression that I do not believe this is correct from the standpoint of economics, I merely call attention to the fact that this is one of those proceedings instituted as a result of the Hoch-Smith resolution. Insofar as the Commission can, under the law, it was expected, under this resolution, to think of the needs of agriculture. I agree that the producer—farmer—is interested in the rate on grain all the way through from his farm to the ultimate destination. But I cannot agree that the degree of his interest is the same from the primary market to destination as it is from his farm to the primary

market. He may, in many instances, pay indirectly the freight for that part of the haul from the primary market to destination. There may be some doubt about this. However, there is no doubt that, in 100 per cent of the instances, this farmer pays, directly or indirectly, the freight from his farm to the primary market. If, then, there is to be a breaking of the rate over a primary market which is not made in proportion to mileage or cost of the service, it would seem better, in a Hoch-Smith investigation, to make the lower part of the charge that which was fixed for the transportation from the locality of production to the primary market, rather than to do the opposite in so impressive a manner.

In addition to the objection from the standpoint of economics, there is an objection from a legal standpoint. The rate from locality of production to destination, over the primary market, is in the nature of a proportional rate based upon the theory that it is a through rate, notwithstanding some character of transit is afforded at the primary market. From the primary market to destination, the grain is free, that is to say, it may be hauled by any carrier, whether or not the same carrier had the haul from the locality of production to the primary market. This was clearly held in Atchison, T. & S. F. Ry. Co. v. United States, 279 U. S. 768. Here, however, the charge allowed for that factor of the haul from the primary market to destination is so small that, in many instances, it simply cannot be accepted except by a carrier who has had the greater compensation afforded by that factor of the haul from locality of production to the primary market. If a different carrier takes the grain, perhaps some time later and after it has been afforded transit at the primary market, on to destination, in many instances the first carrier would be considerably more than compensated and the second carrier will scarcely be compensated at all, if not in fact made to lose money. Consequently, this carrier from the primary market will, in many instances, be faced with the choice of abandoning its right to carry the grain—a right which the Supreme Court of the United States has said, in the case above cited, belongs to it—or else the other choice of having to carry the grain without compensation or at an actual loss. This I cannot approve.

[fol. 457] SPLAWN, Commissioner, dissenting:

In this proceeding we have under consideration one of the most important freight-rate structures in the entire country. This vast rate adjustment plays an important part in the economic good-health and well-being of both the carriers and the producers of grain throughout the western district. We have often said the component rates are closely interrelated and delicately balanced.

In this report it is proposed, in effect, to cast aside the existing adjustment and to prescribe a new one. While the report deals at some length with general conditions of both the carriers and the farmers, there is very little in it as to the reasonableness or lawfulness of specific rates in the way in which such rates are generally considered in proceedings before us. In the appendix specific rates are prescribed from and to a multitude of points. Many rates are reduced, some are increased, and in numerous instances important relationships are changed. I have carefully studied the report but am unable to discover the facts upon which many of these changes are predicated. It seems almost too elementary to have to point out that we are without power to change existing rates without adequately supported findings as to their unlawfulness, particularly where rates are increased and relationships are changed. From such facts and discussion as are presented, I have been unable to reach a conclusion as to the lawfulness of many of the existing rates and practices, or whether the rates and practices prescribed will be productive of harm or good. Many conclusions seem to me to have been arrived at arbitrarily.

When the prior order came before the Supreme Court, that tribunal held it to be void because of our failure to grant a petition for a further hearing on account of changed economic conditions, the court in its opinion pointing out that this change in conditions was "the outstanding contemporary fact dominating thought and action throughout the country". Atchison, T. & S. F. Ry. Co. v. United States, 284 U. S. 248, 260. At the further hearing respondents presented much evidence of the decline in their traffic and revenues resulting from the widespread depression. The report has supposedly been molded in the light of these changed conditions. It shows that in 1932 the northern lines earned 0.06 percent on their valuation, while during

the same year the carriers in the western district as a whole earned 1 percent. This and similar facts were presented to prove that the northern lines are in a worse financial condition than the other carriers in the western district. The report contains no comparable figures for other groups of carriers, such as those operating in the Southwest. The group of carriers having more than 75 percent of their mileage in western trunk-line territory failed to earn their fixed charges in 1932 by $26,992,748. Of the important car- [fol. 458] riers in western trunk-line territory, only the Union Pacific and Santa Fe had a substantial amount of income in excess of fixed charges in 1932. West of the Missouri River, the Union Pacific serves Kansas and Nebraska and the Santa Fe operates in Kansas, Oklahoma, and Texas. Under this state of facts I am unable to agree that this record of changed conditions requires that we order substantial reductions in the rates in South Dakota for instance, and at the same time find justified a much higher level of rates in Oklahoma. It is clear that the rates prescribed are not responsive to the evidence as to the relative financial condition of the western trunk-line and southwestern carriers.

The readjustment of the rates prescribed herein is in most respects substantially similar to that prescribed in the original report. In one important and outstanding respect it is different. The level of rates prescribed in the original report for application between points in the Southwest was approximately 10 percent higher than that prescribed for application between points in western trunk-line territory. In this report, the difference between the levels in the two territories is much greater. The best estimate I have been able to make is that the southwestern level prescribed is at least an average of 130 percent of the level prescribed in western trunk-line territory. In my opinion, such a difference is not justified by traffic or transportation conditions or by any other considerations. If the rates prescribed in western trunk-line territory are reasonable the prescribed southwestern rates are too high; on the other hand, if the prescribed southwestern rates are reasonable, the prescribed western trunk-line rates are too low.

Eastern Colorado, Kansas, Oklahoma, and the Panhandle of Texas comprise one grain belt. Transportation conditions throughout this entire producing area are for the most part substantially similar, and the hauls are usually

over level plains. Some of the important grain-carrying railroads transport grain in both southwestern and western trunk-line territories, such as for example, the Santa Fe, Rock Island, and Missouri Pacific. It seems to me that the level of rates should be determined by a consideration of transportation conditions in this entire area, and that the same levels should be prescribed in all portions thereof. In my opinion, by this method alone can discriminations be avoided.

The disadvantages resulting to southwestern producers and shippers of grain and grain products are apparent. Due to the increases in the differences between the rates paid by southwestern shippers and their competitors in western trunk-line territory, the difficulties of the former of trading in common markets will be increased. As an example of the undue preferences which will result, I wish to call attention to the rates prescribed from Oklahoma [fol. 459] to Memphis. The latter point is the natural gateway through which Oklahoma grain destined to the Southeast must pass. The appendix shows that many of the producing points in Oklahoma are grouped on traffic to Memphis and that the present rate on wheat from the group is 31.5 cents. This group rate is increased to 34 cents, except on traffic to Tennessee and the Carolinas, but the gathering rates from Kansas points to Kansas City and the proportional rate from Kansas City to Memphis are reduced, thus resulting in a less favorable relationship for Oklahoma grain as compared with Kansas grain destined to the Southeast. It appears that the increased rates from Oklahoma points to Memphis are made for the purpose of equalizing the rates on Kansas and Oklahoma grain via that gateway, although the distances to Memphis are much shorter from Oklahoma than from Kansas.

In addition to the prescription of these unjustified differences between the levels of the rates in southwestern and western trunk-line territories, rate-break combinations are prescribed into and out of the so-called primary markets, which in my opinion have the effect of increasing the importance of these markets, to the detriment both of the producers of grain and the operators of mills at country points. A careful reading of the report discloses that major consideration has been given to the preservation of these primary markets as great grain centers, and that the chief purpose of this investigation, the amelioration of the de-

pressed condition of agriculture, has been lost sight of. Thus if comparison is made of the gathering rates into the primary markets with the so-called proportional rates from those markets, it will be noted that the dealers at the markets have a very pronounced advantage over shippers and dealers at other points. One or two examples will suffice to illustrate. The rate on wheat from Kansas City, Mo., to Texas group 3, 736 miles, is reduced from 37 to 26 cents. The present rate of 39 cents from Lamesa, Tex., to Kansas City, 728 miles, has not been changed. Another illustration of the advantage the so-called primary markets will have over the producing points is afforded by a comparison of the rates from Kansas City and Amarillo, Tex., to Texas group 3. As stated above, the rate from Kansas City, 736 miles, has been reduced from 37 to 26 cents, but the rate to Texas group 3 from Amarillo, 33 cents for 536 miles, has not been changed.

While I have referred specifically to the rate level prescribed for the Southwest as compared with western trunk-line territory, much that I have said would apply to the related maximum basis prescribed for other portions of the western district. In a report embracing so many issues, it is not practicable for me to express my views with respect to all of the conclusions reached. With some of the conclusions I agree. My principal objections have been ad- [fol. 460] dressed to the summary, and to my mind arbitrary, disposition of major issues, to the fact that the report is not responsive to the evidence as to relative financial conditions of the carriers or the relative transportation and traffic conditions in the several sections of the western district, that it will unduly prefer shippers in western trunk-line territory, and will increase the advantage of the middlemen at the primary markets, to the disadvantage of the real agricultural interests. There is nothing in the report that to my mind even remotely responds to the spirit of the Hoch-Smith resolution.

In view of the even division of the other members of the Commission upon the question of port equalization from points in Idaho, Commissioner Eastman participated in the decision of this particular question and voted for port equalization on the ground that it was consistent with action on similar situations in other parts of the report.

APPENDIX

Statement of present, Part 7, and prescribed rates per hundred pounds (proportional rates)

	Present Cents	Part 7 Cents	Prescribed Cents
To Duluth from—			
Minneapolis	6.5	5.5	4.5
Sioux City	17.5	14	13
Omaha	17.5	17	16
Kansas City	19	21	22
To Minneapolis from—			
Sioux City	16.5	8.5	8.5
Omaha	16.5	11.5	11.5
Kansas City	17.5	15.5	17.5
Duluth	6.5	5.5	4.5
To Chicago from—			
St. Louis	12	12	6
Minneapolis	13	12	12
Sioux City	17.5	15	15
Omaha	17.5	15	15
Kansas City	17.5	15	15
Duluth	13	12	12
Peoria	6.5	....	3
To Peoria from—			
Minneapolis	13	12	12
Duluth	13	17.5	12
Omaha	15	13	13
Kansas City	15	13	13
Chicago	8	8	3
To St. Louis from—			
Sioux City	17.5	16	16
Omaha	13.5	13	13
Kansas City	13.5	9	11
Minneapolis	20	17	15
Duluth	20	22.5	15
Chicago	12	12	6
Peoria	7	....	3
To Sioux City from—			
Minneapolis	[1]18	11.5	11.5
Duluth	[1]23	17	16
To Kansas City from—			
Omaha	8	6	6
Minneapolis	[1]23.5	17	20.5
Duluth	[1]30	22.5	25
To Omaha from—			
Sioux City	5	3	3
Minneapolis	[1]22.5	14.5	14.5
Duluth	[1]29	20	19
To New Orleans from—			
Cairo	26	16	16
Memphis	17	10	8
St. Louis	28.5	19	19
Kansas City	41	26	26
Omaha	42	32	32
Chicago	35.5	....	25

APPENDIX

Statement of present, Part 7, and prescribed rates per hundred pounds (proportional rates)

	Present Cents	Part 7 Cents	Prescribed Cents
To Texas Group 3 from—			
Kansas City	37	21	26
Omaha	45	27	32
St. Louis	37	23	26
To Louisiana Group 3 from—			
Kansas City	37	26	[1] 26
Omaha	45	32	32
St. Louis	37	23	[1] 26
Memphis	25.5	14	15
Cairo	34.5	20	23
To Little Rock from—			
Kansas City	26.5	16	20
Omaha	31	22	26
St. Louis	23.5	10	14
Cairo	20.5	7	11
To Texarkana from—			
Kansas City	31	16	20
Omaha	35	22	26
St. Louis	31	16	20
Cairo	28	13	17
Memphis	22	7	11
To Memphis from—			
Omaha for Mississippi Valley	25	22	24
Omaha for Southeast	22.5	22	24
Kansas City for Mississippi Valley	24	16	18
Kansas City for Southeast	21.5	16	18
St. Louis for Mississippi Valley	11.5	9	11
St. Louis for Southeast	9	9	11

[1] Flat rate.

[2] Part 7 rates were 3 cents higher to western Louisiana from St. Louis and 4 cents less from Kansas City.

[fol. 461] Flat rates (from California to California)

To—	From Sacramento			From Guinda			From Woodland		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Bakersfield	23	18.5	23	38.5	21	38.5	26.5	19.5	26.5
Buttonwillow	23	20	23	39	22.5	39	30	20.5	30
Calexico	41	31.5	41	60.5	34	60.5	44.5	32	44.5
Coalinga	22	17.5	22	38	19.5	38	26	18.5	26
Fresno	18.5	14.5	18.5	34.5	17.5	34.5	22	15.5	22
Los Angeles	31.5	25	31.5	46	26.5	46	35	25.5	35
Los Banos	14.5	13	14.5	31	15	31	20.5	13.5	20.5
Merced	16	12.5	16	31	15	31	19	13	19
Porterville	22	17	22	38	20	38	25.5	18	25.5
Salinas	25.5	15.5	25.5	37	16	37	29	15	29
San Bernardino	35.5	26.5	35.5	57.5	28.5	57.5	39	27	39
San Luis Obispo	29	20	29	40.5	21	40.5	32.5	20	32.5
Santa Ana	34	26	34	49.5	28	49.5	35	26.5	35
Santa Barbara	34.5	24	34.5	46	25	46	35	24	35
Santa Cruz	22.5	14.5	22.5	35	14.5	35	22.5	14	22.5
Tulare	20.5	16	20.5	36.5	19	36.5	24	17	24

	From Marysville			From Chico			From Cole		
Bakersfield	26.5	20	26.5	33.5	21.5	33.5	45	29	45
Buttonwillow	27	21	27	37	23.5	37	47.5	29.5	47.5
Calexico	44.5	32.5	44.5	50.5	34.5	50.5	56.5	41	56.5
Coalinga	26	19.5	26	36.5	21	36.5	46.5	28.5	46.5
Fresno	22	16	22	27	17.5	27	41	25.5	41
Los Angeles	35	26	35	38	27	38	46	34	46
Los Banos	20.5	14.5	20.5	25	16	25	39.5	24	39.5
Merced	19	14.5	19	27	16	27	39.5	24	39.5
Porterville	25.5	19	25.5	33.5	20	33.5	45	28	45
Salinas	31	16.5	31	35.5	18	35.5	46	25.5	46
San Bernardino	39	28	39	41.5	29	41.5	50	35.5	50
San Luis Obispo	32.5	21	32.5	38	23.5	38	46	29.5	46
Santa Ana	35	27	35	38	28.5	38	55	35	55
Santa Barbara	35	25.5	35	38	27	38	46	33	46
Santa Cruz	28	15.5	28	31.5	17	31.5	45	25	45
Tulare	24	18	24	33.5	19.5	33.5	45	27	45

[fol. 462]

California to San Francisco Bay ports

From—	To San Francisco [1]			To Port Costa [1]		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents
Bakersfield	23	19.5	23	23	19	23
Chico	19	14.5	19	17.5	13	17.5
Coalinga	22	17.5	22	22	17	22
Cole	28	22	28	28	21	28
Colusa	18	13	18	16.5	12	16.5
Dorris	32.5	22.5	32.5	32.5	21	32.5
Exeter	21	17.5	21	20.5	16.5	20.5
Fresno	19.5	15.5	19.5	18.5	14.5	18.5
Fruto	19	14.5	19	17.5	13	17.5
Galt	10.5	12.5	10.5	9	11	9
Josephine	18	12.5	18	16.5	11	16.5
Knights Landing	14	11.5	14	12.5	9.5	12.5
Lodi	10	12	10	7.5	11	7.5
Marysville	15.5	13	15.5	14	11.5	14
Merced	17	13	17	16	12.5	16
Modesto	12.5	12	12.5	11.5	11	11.5
Nelson	19	14	19	17.5	13	17.5
Nord	19	14.5	19	17.5	13.5	17.5
Oakdale	11.5	13	11.5	10.5	12	10.5
Oroville	17.5	13.5	17.5	16	12.5	16
Princeton	19	13.5	19	17.5	12.5	17.5
Red Bluff	20	15.5	20	18.5	14.5	18.5
Roseville	15	12	15	13.5	10	13.5
Sacramento	10.5	11	10.5	10	9	10
Salinas	17.5	12.5	17.5	19	13	19
Stockton	7.5	11.5	7.5	7.5	10	7.5
Stratford	21	17	21	21	16	21
Tracy	7.5	10	7.5	5.5	9	5.5
Tulare	21	17	21	20.5	16	20.5
Valley Springs	17.5	13	17.5	16.5	12	16.5
Walnut Grove	10.5	12.5	10.5	10.5	11	10.5
Willows	18	13.5	18	16.5	12.5	16.5

[1] Oakland takes same rates as San Francisco, and South Vallejo same as Port Costa.

Flat rates (California to Arizona, New Mexico, and El Paso, Tex.)

To—	From Weed			From Marysville			From Sacramento		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Albuquerque, N. Mex	68.5	61	63	68	54.5	58	68	53	57
Ash Fork, Ariz	68.5	48.5	56	59	41	51	59	39.5	49
Bowie, Ariz	63.5	57.5	63	59	51.5	59	59	50	59
El Paso, Tex	63.5	63.5	68	59	57.5	63	59	56.5	62
Flagstaff, Ariz	68.5	50	55	60	43	49	60	41	48
Kingman, Ariz	68.5	44.5	53	59	37	46	59	35	46
Lordsburg, N. Mex	63.5	59	64	59	52.5	59	59	51.5	58
Maricopa, Ariz	63.5	51.5	58	52.5	44.5	53	52.5	43	52
Phoenix, Ariz	63.5	49	56	57.5	41	51	57.5	39.5	49
Tucson, Ariz	63.5	54.5	61	57.5	48	55	57.5	46	54
Yuma, Ariz	60.5	46.5	54	44.5	38.5	49	41	37	47

[fol. 463] California to Los Angeles

From—	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents
Calexico	25.5	16.5	25.5
Calipatria	22	15.5	22
El Centro	24	16	24
Holtville	26.5	16.5	26.5
Huron	21.5	19	21.5
Knowles	21.5	20	21.5
Milton	21.5	23	21.5
Oakdale	21.5	21.5	21.5
Salinas	21.5	21.5	21.5
Sandia	26.5	16	26.5
Tracy	21.5	23	21.5
Tres Pinos	21.5	23.5	21.5
Westmoreland	25.5	16	25.5

Colorado to Omaha-Kansas City and Chicago

From—	To Omaha-Kansas City				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Ariba	29	26	25	26	46.5	42	40	41
Brandon	29.5	23	27.5	24	43	38.5	42.5	39
Carr	33	29.5	28	26	50.5	45.5	43	41
Delhi	33	29.5	28	26	50.5	45.5	43	41
Fleming	32.5	29.5	24.5	26	40	45.5	39.5	41
Flagler	27	24.5	24.5	26	44.5	40	39.5	41
Fowler	33	29.5	28	26	50.5	45.5	43	41
Frederick	33	29.5	28	26	50.5	45.5	43	41
Haswell	28	25	28	26	45.5	41	43	41
Hudson	33	29.5	28	26	50.5	45.5	43	41
Keota	33	29.5	28	26	50.5	45.5	43	41
Kersey	33	29.5	28	26	50.5	45.5	43	41
Koenig	33	29.5	28	26	50.5	45.5	43	41
Lamar	27	24.5	26	25	44.5	40	41	40
Las Animas	29.5	26.5	27	26	46.5	42	42	41
Limon	33	29.5	28	26	50.5	45.5	43	41
Longmont	33	29.5	28	26	50.5	45.5	43	41
Lucerne	33	29.5	28	26	50.5	45.5	43	41
Merino	33	29.5	28	26	50.5	45.5	43	41
Olney	33	29.5	28	26	50.5	45.5	43	41
Orchard	33	29.5	28	26	50.5	45.5	43	41
Peyton	33	29.5	28	26	50.5	45.5	43	41
Platner	33	29.5	28	26	50.5	45.5	43	41
Proctor	33	29.5	28	26	50.5	45.5	43	41
River Bend	33	29.5	28	26	50.5	45.5	43	41
Sterling	33	29.5	28	26	50	45	43	41
Stratton	23.5	21	24	25	41	37	39	40
Timpas	33	29.5	28	26	50.5	45.5	43	41
Vroman	33	29.5	28	26	50.5	45.5	43	41
Wray	23	20.5	23	24	40.5	38.5	38	39
Yuma	29.5	26.5	24	25	47	42.5	39	40

[fol. 464] Colorado transcontinental groups G and J to Pacific coast

	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
North Pacific coast	59	53	53	65
California	[1] 61	[1] 54.5	55	65

[1] Average of present rates.

Colorado to Louisiana group 3, including New Orleans

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains [1]	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Colorado common points	64	57.5	54	52
Lamar	64	57.5	52	51
Limon	64	57.5	54	52
Platner	64	57.5	54	52
Sterling	64	57.5	54	52
Wray	60	54	49	50

[1] Part 7 rates were 3 cents less to points west of the Rock Island south through Ruston, Alexandria, and Eunice.

Colorado to Texas group 3

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Colorado common points	61	55	49	52
Lamar	61	55	47	51
Limon	61	55	47	52
Platner	61	55	49	52
Sterling	61	55	49	52
Wray	56	50.5	44	50

[fol. 465] Eastern Colorado transcontinental groups G and J

To New Mexico and El Paso, Tex.	Present wheat [1]	Present coarse grains [2]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains [3]
	Cents	Cents	Cents	Cents
Albuquerque, N. Mex.	61	54.5	30.5	47
Animas	61	54.5	41.5	50
Baca	61	54.5	34	50
Belen	61	54.5	31	50
Berino	61	54.5	38	50
Bernalillo	61	54.5	29	46
Columbus	61	54.5	40	50
Deming	61	54.5	39.5	50
Domingo	61	54.5	28.5	45
Engle	61	54.5	35	50
Gallup	61	54.5	35.5	50
Grants	61	54.5	33.5	50
Hachita	61	54.5	40.5	50
Hatch	61	54.5	36.5	50
Laguna	61	54.5	32.5	50
Las Cruces	61	54.5	37.5	50
Lordsburg	61	54.5	40.5	50
Perea	61	54.5	35	50
Rodeo	61	54.5	41.5	50
San Antonio	61	54.5	32.5	50
San Marcial	61	54.5	34	50
Thoreau	61	54.5	36.5	50
El Paso, Tex.	61	54.5	39.5	50

[1] Average of present rates of 59 and 63 cents.
[2] Average of present rates of 53 and 56 cents.
[3] From the new Colorado-Oklahoma-Texas group.

To Arizona	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains [1]
	Cents	Cents	Cents	Cents
.....	64.5	58	53	60
enson	61	54.5	44.5	55
Bisbee	61	54.5	45.5	55
Casa Grande	61	54.5	48.5	60
Chambers	61	54.5	37.5	55
Clarkdale	61	54.5	46.5	60
Clifton	67	60.5	43	55
Douglas	61	54.5	43.5	55
Fairbank	61	54.5	45.5	55
Flagstaff	61	54.5	42.5	55
Globe	67	60.5	46.5	55
Holbrook	61	54.5	39.5	55
Kingman	61	54.5	48.5	60
McNary	89	82.5	41.5	55
Miami	67	60.5	47	55
Naco	61	54.5	44.5	55
Navajo	61	54.5	37.5	55
Nogales	61	54.5	48	55
Patagonia	61	54.5	47	55
Phoenix	61	54.5	49	60
Prescott	61	54.5	48.5	60
Safford	64.5	58	41.5	55
Seligman	61	54.5	45.5	60
Tucson	61	54.5	46.5	55
Willcox	61	54.5	43	55
Williams	61	54.5	43.5	60
Winslow	61	54.5	40	55

[1] From the new Colorado-Oklahoma-Texas group; except that to Albuquerque, Bernalillo, and Domingo these rates are prescribed only for application from Colorado.

[fol. 466] Idaho to Omaha and Kansas City

From—	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents
American Falls	51	46	44
Caldwell	55	50	48
Mackay	52	47	45
Montpelier	48	43	41
Mountain Home	54	49	47
Paris	48	43	41
Rexburg	52	47	45
Twin Falls	52	47	45
Utah common points (Ogden and Salt Lake City)	48	43	41

Idaho to Texas group 3, including Houston and Galveston

From—	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents
American Falls	79	67	70
Caldwell	83	71	74
Cambridge	98	74	77
Idaho Falls	80	68	71
Mountain Home	82	70	73
Pocatello	76	67	70
Twin Falls	80	68	71

Idaho and Utah to Louisiana group 3, including New Orleans

From—	Present wheat and coarse grains	Part 7 wheat and coarse grains [1]	Prescribed wheat and coarse grains
	Cents	Cents	Cents
American Falls, Idaho	82	72	70
Caldwell, Idaho	86	76	74
Cambridge, Idaho	98	79	77
Idaho Falls, Idaho	83	73	71
Mountain Home, Idaho	85	75	73
Pocatello, Idaho	82	72	70
Twin Falls, Idaho	83	73	71
Ogden, Utah	79	69	67

[1] Part 7 rates were 3 cents less to points west of the Rock Island south through Ruston, Alexandria, and Eunice.

[fol. 467] Southern Idaho and Utah to Arizona, New Mexico, and Needles, Calif.

To—	American Falls			Bancroft			Caldwell		
	Wheat and coarse grains [1]			Wheat and coarse grains [1]			Wheat and coarse grains [1]		
	Present	Part 7	Prescribed	Present	Part 7	Prescribed	Present	Part 7	Prescribed
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Allantown, Aris	66.5	59	65	68	58.5	65	73	66.5	65
Ash Fork	60.5	52.5	65	62	52	65	67	60	65
Benson	66.5	60.5	65	68	60	65	73	68	65
Bisbee	66.5	62.5	65	68	61.5	65	73	69.5	65
Bowie	66.5	62.5	65	68	61.5	65	73	69.5	65
Douglas	66.5	63	65	68	61.5	65	73	70	65
Flagstaff	61.5	54.5	65	63	54	65	68	61.5	65
Holbrook	66.5	57.5	65	68	57	65	73	64.5	65
Kingman	58	49.5	65	59.5	48.5	65	64.5	56.5	65
Maricopa	61.5	56.5	65	63	55.5	65	68	63.5	65
Mesa	63	55.5	65	64.5	55	65	69.5	63	65
Nogales	66.5	61	65	68	60	65	73	68.5	65
Phoenix	60.5	52.5	65	62	52	65	67	60	65
Prescott	61.5	54	65	63	53	65	68	61	65
Tucson	63	58.5	65	64.5	58	65	69.5	66	65
Williams	61.5	54	65	63	52.5	65	68	60.5	65
Yuma	56.5	51.5	65	58	51	65	63	58.5	65
Needles, Calif	58	47	65	59.5	46.5	65	64.5	54.5	65
Lordsburg, N. Mex	69	64	70	70.5	63	70	75.5	69.5	70
	Mountain Home			Pocatello			St. Anthony		
Allantown, Aris	71	64	65	66.5	58.5	65	68.5	61	65
Ash Fork	65	57.5	65	66.5	52	65	62.5	54.5	65
Benson	71	65.5	65	66.5	60	65	68.5	62.5	65
Bisbee	71	67	65	66.5	61.5	65	68.5	64	65
Bowie	71	67	65	66.5	61.5	65	68.5	64	65

To—	Wheat and coarse grains [1]			Wheat and coarse grains [1]			Wheat and coarse grains [1]		
	Present Cents	Part 7 Cents	Prescribed Cents	Present Cents	Part 7 Cents	Prescribed Cents	Present Cents	Part 7 Cents	Prescribed Cents
Douglas	71	68	65	66.5	61.5	65	68.5	64.5	65
Flagstaff	66	59	65	61.5	54	65	63.5	56.5	65
Holbrook	71	62.5	65	66.5	57	65	68.5	59	65
Kingman	62.5	54.5	65	58	48.5	65	60	51.5	65
Maricopa	66	61	65	61.5	55.5	65	63.5	58	65
Mesa	67.5	60.5	65	63	55	65	65	57.5	65
Nogales	71	66	65	66.5	60.5	65	68.5	63	65
Phoenix	65	58	65	60.5	52	65	62.5	55	65
Prescott	66	58.5	65	61.5	53	65	63.5	55.5	65
Tucson	67.5	64	65	63	58.5	65	65	61	65
Williams	66	58.5	65	61.5	52.5	65	63.5	55.5	65
Yuma	61	56.5	65	56.5	51	65	58.5	53	65
Needles, Calif	62.5	52.5	65	58	46.5	65	60	49.5	65
Lordsburg, N. Mex	73.5	67	70	69	61.5	70	71	66	70
	Twin Falls			Weiser			Ogden		
Allantown, Ariz	68.5	62.5	65	74.5	68	65	62.5	54.5	60
Ash Fork	62.5	55.5	65	68.5	61.5	65	56.5	48	60
Benson	68.5	63.5	65	74.5	69	65	62.5	55.5	60
Bisbee	68.5	65.5	65	74.5	71	65	62.5	57.5	60
Bowie	68.5	65.5	65	74.5	71.5	65	62.5	57.5	60
Douglas	68.5	65.5	65	74.5	71.5	65	62.5	58	60
Flagstaff	63.5	57.5	65	69.5	63.5	65	57.5	49.5	60
Holbrook	68.5	60	65	74.5	66	65	62.5	52.5	60
Kingman	60	52	65	66	58	65	54	43.5	60
Maricopa	63.5	59	65	69.5	65.5	65	57.5	48.5	60
Mesa	65	58.5	65	71	64.5	65	59	51	60
Nogales	68.5	63.5	65	74.5	69.5	65	62.5	56.5	60
Phoenix	62.5	55.5	65	68.5	61	65	56.5	48.5	60
Prescott	63.5	57	65	69.5	62.5	65	57.5	49	60
Tucson	65	61.5	65	71	68	65	59	54.5	60
Williams	63.5	56.5	65	69.5	62.5	65	57.5	49	60
Yuma	58.5	54.5	65	64.5	60	65	52.5	46	60
Needles, Calif	60	50	65	66	56.5	65	54	41.5	60
Lordsburg, N. Mex	71	66.5	70	77	72.5	70	65	59	65

[1] Present rates on flour are 5 cents higher in each instance than the rates on wheat.

[fol. 468]

Southern Idaho and Utah common points to California

From—	To San Francisco			To Los Angeles			To Weed		
	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
American Falls	50	38	44	50	43	49	54	42.5	46
Bancroft	50	41.5	46	51.5	42.5	49	54	45	49
Caldwell	55.5	42.5	48	56.5	49.5	53	59.5	47.5	47
Cambridge	71.5	45	52	71.5	51.5	57	65.5	50	48
Montpelier	51.5	42.5	47	51.5	44	49	55.5	47	50
Mountain Home	54.5	41.5	46	54.5	48	52	58.5	46.5	46
Pocatello	50	40.5	45	50	42.5	47	54	43	46
St. Anthony	52	44	47	52	46	50	56	45.5	50
Twin Falls	45	34.5	41	52	45.5	50	59	39	45
Weiser	56.5	44	49	58	50.5	54	60.5	49	47
Utah common points	46	38	44	46	36.5	44	50	43	45

From—	To Fresno			To Bakersfield			To Santa Barbara		
	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains [1]	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
American Falls	53	40.5	46	55	44.5	50	59	49	52
Bancroft	53	43.5	48	55	47	52	59	51	52
Caldwell	58.5	45.5	50	60.5	49	54	64.5	53.5	56
Cambridge	64.5	48.5	54	76.5	51.5	58	80.5	56	60
Montpelier	54.5	45	49	56.5	48	53	60.5	53	52
Mountain Home	57.5	44.5	48	59.5	48	52	63.5	52.5	55
Pocatello	53	43.5	47	55	45	51	59	48.5	50
St. Anthony	55	47	49	57	47.5	53	61	51.5	53
Twin Falls	48	37.5	43	50	41.5	47	54	46	53
Weiser	59.5	47.5	51	61.5	50.5	55	65.5	55	57
Utah common points	49	40.5	44	51	44	49	55	39.5	47

[1] Present rates on flour are 5 cents more than on wheat.

Southern Idaho to Portland and Seattle

From—	To Portland				To Seattle			
	Present wheat [1]	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
American Falls	44	44	34	41.5	47	47	36	41.5
Ashton	46	46	37.5	45	49	49	39.5	45
Bancroft	47	47	36	44	50	50	38	44
Boise	35	35	27	33	38	38	29	35
Burley	43	43	32.5	40.5	46	46	34.5	40.5
Fairfield	44	44	32.5	41	47	47	34.5	41
Idaho Falls	44	44	36	44	47	47	38	44
Mackay	47	47	38	45	50	50	40	45
Mesa	44	44	26.5	34	47	47	28.5	36
Montpelier	47	47	37.5	45	50	50	39.5	45
Ririe	45	45	36.5	45	48	48	38.5	45
Pocatello	44	44	34	42.5	47	47	36	42.5
Shoshone	42	42	31	39.5	45	45	33	39.5
Tetonia	47	47	38.5	47.5	50	50	40.5	47.5
Twin Falls	44	44	34	42	47	47	36	42
Weiser	30	30	24	30	33	33	26	33

[1] Present rates on flour are 5 cents more than on wheat.

[fol. 469]

Iowa to Chicago

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Algona	21.5	19.5	21	20
Calmar	20.5	18.5	18	17.5
Cedar Rapids	19.5	17.5	16	15.5
Centerville	20.5	18.5	19	19
Chariton	20.5	18.5	19.5	19.5
Clarinda	22.5	20.5	23	22.5
Creston	22.5	20.5	21.5	21
Des Moines	20.5	18.5	20.5	19.5
De Witt	17	15.5	13.5	13.5
Estherville	23	20.5	23	22.5
Fort Dodge	21	19	21	20.5
Hawarden	26.5	24	25	25
Indianola	20.5	18	20.5	20.5
Low Moor	14.5	13	13	13
Marshalltown	19.5	17.5	18	18
Mason City	22.5	20.5	20	20
Red Oak	23	20.5	23	23
Rock Rapids	25.5	23	25	24
Sheldon	24.5	22	24	23.5
Shenandoah	24	21.5	24	23.5
Stanwood	18	16	14.5	14.5
Stockton	14.5	13	15	14
Storm Lake	23	20.5	23	22
Waterloo	19.5	17.5	18	18

Iowa to Minneapolis

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Algona	17	15.5	14	14
Calmar	18	16	14	14
Carroll	20.5	18.5	17.5	17
Cedar Rapids	19	17	17.5	16.5
Chariton	21.5	19.5	19	19
Clarinda	23	20.5	24	20.5
Creston	23	20.5	24.5	20.5
Estherville	16.5	15	13.5	13.5
Fort Dodge	17	15.5	15.5	15.5
Iowa Falls	17.5	15.5	15	15
Marshalltown	18	16	16.5	16
Mason City	15.5	14	13	13
Muscatine	19.5	17.5	19.5	19
Sac City	21.5	19.5	17.5	16.5
Sheldon	17	15.5	15.5	15.5
Sioux City (local)	21	19	18	17
Spencer	17	15.5	14.5	14.5
Storm Lake	18	16	17.5	16
Waterloo	17.5	15.5	16	15.5

[fol. 470] Iowa to Omaha and St. Louis

	Present wheat	Present coarse grains	Part 7, wheat and coarse grains	Prescribed wheat and coarse grains
Iowa to Omaha:	Cents	Cents	Cents	Cents
Algona	16.5	15	15	15
Boone	14	12.5	13	13
Centerville	16.5	15	15.5	15.5
Chariton	14.5	13	13.5	13.5
Cherokee	16.5	15	14	14
Clarinda	10	9	10	10
Creston	12	11	11	11
Fort Dodge	13.5	12	13	13
Hawarden	13.5	12	13	13
Luverne	16.5	15	15	14
Manning	10.5	9.5	10	9.5
Merrill	13.5	12	13	12
Onawa	11	10	10	9
Rock Rapids	18	16	15	14
Sheldon	14.5	13	14	14
Shenandoah	9.5	8.5	10	8
Storm Lake	15.5	14	14	14
Iowa to St. Louis:				
Algona	24.5	22	23	23
Ames	22.5	20.5	21	20.5
Cedar Rapids	21.5	19.5	19	18
Centerville	19.5	17.5	16.5	16.5
Chariton	19.5	17.5	19	19
Clarinda	22	20	21	20
Creston	22	20	20.5	20
Dixon	19.5	17.5	17.5	17.5
Fort Dodge	23	20.5	23	22
Indianola	20.5	18.5	20	19.5
Iowa City	20	18	18	18
Marshalltown	21.5	19.5	20.5	19.5
Rock Rapids	27.5	24.5	26	26
Ruthven	25	22.5	24	23.5
Sheldon	26.5	24	26	26
Shenandoah	22.5	20.5	22	20.5
Storm Lake	25	22.5	24	23
Waterloo	21.5	19.5	20.5	19.5
Waverly	22.5	20.5	21	20.5

Iowa to Kansas City and Texas

From—	Iowa to Kansas City				Iowa to Texas group 3, including Glaveston and Houston			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Algona	24.5	22	21	21	55	49.5	42	47
Centerville	16.5	15	15.5	15	47	42.5	36.5	41
Chariton	16.5	15	15.5	15	47	42.5	36.5	41
Cherokee	24.5	22	20	20	55	49.5	41	46
Clarinda	17	15.5	13.5	13.5	47.5	43	34.5	39.5
Creston	16.5	15	14	14	47	42.5	35	40
Fort Dodge	21.5	19.5	19.5	19.5	52	47	40	45
Indianola	16.5	15	16.5	16.5	47	42.5	37.5	42.5
Sheldon	22.5	20.5	20	20	53	48	41	46
Shenandoah	16.5	15	14	14	47	42.5	35	40
Storm Lake	24	21.5	20	20	54.5	49	41	46

[fol. 471] Kansas to Kansas City and Chicago

From—	Kansas to Kansas City				Kansas to Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Beloit	18	16	15	16	35.5	32.5	30	31
Concordia	17.5	15.5	15	15.5	35	32	30	30.5
Dodge City	20.5	18.5	18.5	20	38	34.5	33.5	35
Elkhart	21.5	19.5	22	24	39	35.5	37	39
Ellsworth	19	17	16	17	36.5	33.5	31	32
Goodland	20.5	18.5	22	22	38	34.5	37	37
Grainfield	20.5	18.5	18.5	20	38	34.5	33.5	35
Great Bend	19.5	17.5	17	18	37	33.5	32	33
Hutchinson	19	17	16	17	36.5	33.5	31	32
Kinsley	19.5	17.5	17	18	37	33.5	32	33
Oswego	13.5	11.5	13	11.5	31	28	28	26.5
Ottawa	12	11	10	10	29.5	26.5	25	25
Salina	18	16	15	16	35.5	32.5	30	31
Satanta	21	19	18.5	21	38.5	35	33.5	36
Syracuse	20.5	18.5	22	22	38	34.5	37	37
Wakeeney	20	18	18.5	19	37.5	34	33.5	34
Wichita	18	16	15	16	35.5	32.5	30	31

Kansas to Louisiana group 3, including New Orleans

From—	Present domestic		Present export to New Orleans		Part 7 domestic wheat and coarse grains [1]	Prescribed domestic wheat and coarse grains
	Wheat	Coarse grains	Wheat	Coarse grains		
	Cents	Cents	Cents	Cents	Cents	Cents
Beloit	51	46	40.5	36.5	41	42
Colby	53.5	48	44	39.5	46	47
Concordia	51	46	40	36	41	41.5
Dodge City	52	47	40	36	44.5	46
Goodland	54	48.5	44	39.5	48	48
Great Bend	50	45	38	34.5	43	44
Hutchinson	50	45	37.5	34	42	43
Kingman	50	45	38.5	35	39	43
Kinsley	50	45	39	35.5	43	44
Lenora	53	47.5	42	38	43	44
Liberal	52	47	44	39.5	46	45
Newton	48	43	37	33.5	41	42
Oakley	53	47.5	44	39.5	46	47
Salina	48	43	38	34.5	41	42
Stafford	50	45	38	34.5	43	44
Syracuse	54.5	49	40.5	36.5	48	48
Tribune	53	47.5	39	35.5	48	48
Wakeeney	52.5	47.5	43.5	39	44.5	45
Wichita	48	43	38	34.5	38	42

[1] Part 7 rates were 3 cents less to points west of the Rock Island south through Ruston, Alexandria, and Eunice.

[fol. 472] Kansas to Texas group 3, including Galveston and Houston

From—	Present domestic		Present export to Texas ports		Part 7 wheat and coarse grains	Prescribed domestic wheat and coarse grains
	Wheat	Coarse grains	Wheat	Coarse grains		
	Cents	Cents	Cents	Cents	Cents	Cents
Beloit	51	46	40.5	36.5	36	42
Colby	53.5	48	44	39.5	41	47
Concordia	51	46	40	36	36	41.5
Dodge City	48	43	40	36	39.5	46
Goodland	54	48.5	44	39.5	43	48
Great Bend	48	43	38	34.5	38	44
Hutchinson	46	41.5	37.5	34	37	43
Kingman	46	41.5	37.5	34	34	41
Kinsley	48	43	39	35.5	38	44
Lenora	53	47.5	42	38	38	44
Liberal	50	45	44	39.5	41	44
Newton	46	41.5	37	33.5	36	42
Oakley	53	47.5	44	39.5	41	47
Salina	48	43	38	34.5	36	42
Stafford	48	43	38	34.5	38	44
Syracuse	51.5	46.5	40.5	36.5	43	48
Tribune	51.5	46.5	39	35.5	43	48
Wakeeney	52.5	47.5	43.5	39	39.5	45
Wichita	46	41.5	37	33.5	33	40

Minnesota to Duluth, Minneapolis, and Chicago

	To Duluth				To Minneapolis				To Chicago			
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Albert Lea	18.5	16.5	16.5	15.5	12	11	11	11	22.5	20.5	21	21
Appleton	15.5	14	19.5	18.5	13.5	12	14	14	26	23.5	26	26
Breckenridge	14.5	13	16.5	16.5	14	12.5	15.5	15.5	27	24.5	27.5	27.5
Crookston	16	14.5	17.5	17.5	16	14.5	18	18	29	26	30	30
Evansville	14	12.5	16.5	16.5	13	11.5	14	14	26	23.5	26	26
Fairmont	19.5	17.5	18.5	17.5	12.5	11.5	13	13	22.5	20.5	23	23
Faribault	14.5	13	15.5	14.5	8	7	10	10	22.5	20.5	21.5	21.5
Fergus Falls	14	12.5	15.5	15.5	13.5	12	14	14	26.5	24	26	26
Glenwood	14	12.5	15.5	15.5	12.5	11.5	13	13	25.5	23	25	25
Glyndon	15.5	14	16.5	16.5	14.5	13	16	16	27.5	24.5	28	28
Granite Falls	17	15.5	18.5	17.5	12.5	11.5	13	13	25.5	23	25	25
Hanley Falls	17	15.5	18.5	17.5	12.5	11.5	13	13	25.5	23	25	25
Luverne	20.5	18.5	21	20	14	12.5	15.5	15.5	25.5	23	25	25
Mankato	17	15.5	15.5	14.5	10.5	9.5	10	10	22.5	20.5	22	22
Marshall	17.5	15.5	19.5	18.5	13	11.5	14	14	26	23.5	26	26
Miloma	19.5	17.5	19.5	18.5	13	11.5	14	14	24	21.5	24	24
New Ulm	17.5	15.5	16.5	15.5	11	10	11	11	25	22.5	23	23
Ortonville	20	18	20.5	19.5	13.5	12	15	15	26.5	24	27	27
Paynesville	15.5	14	15.5	15.5	10.5	9.5	11	11	24	21.5	23	23
Pipestone	19	17	20.5	19.5	14	12.5	15	15	25.5	23	26	26
Red Wing	14	12.5	15.5	14.5	7.5	6.5	10	10	22.5	20.5	20	20
Rochester	18.5	16.5	17	16	12	11	11.5	11.5	21	19	19.5	19.5
Sauk Center	14	12.5	15	15	12	11	12.5	12.5	25	22.5	24.5	24.5
Staples	13	11.5	13	13	12.5	11.5	13	13	25.5	23	25	25
Tintah	15.5	14	16.5	16.5	13.5	12	14.5	14.5	26.5	24	26.5	26.5
Willmar	16	14.5	16.5	15.5	11	10	11	11	24	21.5	23	23
Winnebago	19	17	18.5	17.5	12.5	11.5	13	13	22.5	20.5	22	22
Winona	18.5	16.5	17	16	12	11	11.5	11.5	18	16	18.5	18.5
Worthington	20	18	20.5	19.5	13.5	12	15	15	24.5	22	24	24

[fol. 473]

Southeastern Missouri to St. Louis, Cairo, and Memphis

	To St. Louis [1]				To Cairo [1]				To Memphis [1]			
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Annistcn	16	14.5	17	17	13.5	12.5	14	14	16	14.5	15.5	15.5
Ardeola	16	14.5	15	15	13.5	12.5	9	9	16	14.5	15.5	15.5
Belmont	16	14.5	17	17	13.5	12.5	12	12	16	14.5	17	17
Bernie	16	14.5	16	16	13.5	12.5	12	12	16	14.5	14	14
Birds Point	16	14.5	18	18	15	13.5	15	15	16	14.5	16	16
Blackwell	12.5	11	10	10	20	18	14	14	19	17	20	20
Delta	16	14.5	14	14	12	11	9	9	16	14.5	15.5	15.5
Dexter	16	14.5	15.5	15.5	13.5	12.5	11	11	16	14.5	15.5	15.5
Doniphan	16	14.5	16.5	16.5	18	16.5	14	14	16	14.5	15.5	15.5
Farrensburg	16	14.5	17	17	13.5	12.5	13	13	16	14.5	15.5	15.5
Illmo	16	14.5	13	13	12	11	7.5	7.5	16	14.5	16.5	16.5
Ironton	12.5	11.5	12	12	20	18	13	13	19	17	18	18
Jackson	16	14.5	15.5	15.5	14.5	13	9	9	16	14.5	17	17
Lutesville	15.5	14	14	14	16	14.5	9	9	19	17	17	17
Marquand	14.5	13	13	13	18	16.5	11	11	19	17	18	18
Melby	16	14.5	17	17	13.5	12.5	12	12	16	14.5	14	14
Naylor	16	14.5	16.5	16.5	18	16.5	13	13	16	14.5	14.5	14.5
Omeara	15.5	14	12	12	20	18	12	12	19	17	18.5	18.5
Poplar Bluff	16	14.5	15.5	15.5	15	13.5	12	12	16	14.5	15	15
Sykeston	16	14.5	16	16	13.5	12.5	12	12	16	14.5	16	16
Summitt	11	10	10	10	20	18	13	13	19	17	18.5	18.5

[1] Present groups should be continued but the group rates must not exceed the averages of the prescribed rates.

Western and northern Missouri to St. Louis and Chicago

From—	To St. Louis				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Carrollton	17	15.5	16	16	21	19	21	21
Centralia	15.5	14	12	13	19.5	17.5	19.5	21
Chillicothe	16.5	15	16	16	20.5	18.5	21.5	20.5
Clark	15.5	14	13	13	19.5	17.5	20	20
Columbia	16.5	15	13	13	20.5	18.5	23	20
Conception	19.5	17.5	19	19	23.4	21	24	23
Darlington	19.5	17.5	18	19	23.5	21	23	23
Gallatin	17.5	15.5	16.5	16.5	21.5	19.5	23	20.5
Glasgow	17	15.5	14.5	14.5	21	19	21	21
Higbee	15.5	14	16	13	19.5	17.5	20.5	20.5
Higginsville	18	16	16.5	16	22	20	23	23
Macon	16	14.5	14	14	20	18	19.5	19.5
Marshall	17.5	15.5	15.5	15	21.5	19.5	21.5	21.5
Maryville	19.5	17	19	19	23.5	21	24	23
Milan	16.5	15	16.5	16.5	20.5	18.5	20.5	20.5
Plattsburg	17.5	15.5	20	18	21.5	19.5	23	23
Sedalia	17	15.5	16	16	23.5	21	23	23
Trenton	16.5	15	17.5	17.5	20.5	18.5	21	21

[fol. 474]

Western Missouri to Kansas City

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Albany	14	12.5	11.5	11.5
Bethany	15.5	14	12	12
Carrollton	11	10	10	10
Carthage	14.5	13	13.5	13.5
Chillicothe	12	11	10.5	10.5
Clinton	12	11	10.5	10.5
Galena	14.5	13	16	16
Grant City	14	12.5	12	12
Greenfield	14.5	13	13.5	13.5
Harrisonville	9.5	8.5	10	10
Higginsville	10.5	9.5	10	10
Marshall	12.5	11.5	10.5	10.5
Maryville	14	12.5	11	11
Milan	16.5	15	13	13
Neosho	14.5	13	14.5	14.5
Nevada	12	11	11.5	11.5
Ozark	17.5	15.5	15.5	15.5
Platte City	7.5	6.5	10	10
Plattsburg	9	8	10	10
Sedalia	13.5	12	11	11
Springfield	14.5	13	14.5	14.5
Trenton	14	12.5	11.5	11.5
Unionville	16.5	15	13.5	13.5
Warrensburg	11	10	10	10
Warsaw	14.5	13	13	13

Missouri to Lousiana and Texas

From—	Missouri to Louisiana group 3, including New Orleans				Missouri to Texas group 3, including Houston and Galveston			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Aurora	46	41.5	33	35	46	41.5	33	36
Carthage	46	41.5	33	35	46	41.5	33	36
Kansas City (local)	47	42.5	37	(1)	48	43	35	(1)
Neosho	44	39.5	32.5	35	46	41.5	33	36
St. Louis (local)	36	32.5	29	(1)	49	44	37	(1)
Sykeston	33	29.5	29	(1)	46	41.5	34	(1)
Springfield	46	41.5	33	33	46	41.5	33	36

[1] No local rates prescribed, as such rates will be controlled by the proportionals.

Southwestern Missouri to Memphis

From—	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents
Aurora	26.5	24	23	27
Carthage	27	24.5	24	27
Neosho	27.5	25	24	27
Springfield	26	23.5	22	25

[fol. 475] Montana to Minneapolis-Duluth and Chicago

From—	To Minneapolis-Duluth				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Billings	39.5	39.5	37	39.5	52.5	51	49	51.5
Bozeman	42	42	41.5	42	55	53.5	53.5	54
Culbertson	30	30	30	30	43	41.5	42	42
Cut Bank	44.5	44.5	42	42	57.5	56	54	54
Forsyth	36	36	34	36	49	47.5	46	48
Glasgow	35	35	34	35	48	46.5	46	47
Great Falls	42	42	41.5	42	55	53.5	53.5	54
Hardin	49	49	38.5	42	62	60.5	50.5	54
Harlowton	42	42	41.5	42	55	53.5	53.5	54
Havre	39.5	39.5	41.5	42	52.5	51	53.5	54
Helena	44.5	44.5	43.5	44.5	57.5	56	55.5	56.5
Judith Gap	42	42	41.5	42	55	53.5	53.5	54
Kalispell	48	48	46	48	61	59.5	58	60
Laurel	40.5	40.5	37.5	42	53.5	52	49.5	54
Lewistown	42	42	41.5	42	55	53.5	53.5	54
Livingston	42	42	41.5	42	55	53.5	53.5	54
Missoula	48	48	46.5	48	61	59.5	58.5	60
Ringling	48	48	41.5	42	61	59.5	53.5	54
Ryegate	42	42	38	42	53.5	52	50	54
Shelby	43	43	41.5	42	56	54.5	53.5	54
Terry	32.5	32.5	31.5	32.5	45.5	44	43.5	44.5
Yates	31	31	29.5	31	44	42.5	41.5	43

Montana to Seattle-Portland

	Present domestic		Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Wheat	Coarse grains		
	Cents	Cents	Cents	Cents
Billings	40.5	36.5	38	40.5
Bozeman	38.5	34.5	37.5	39
Culbertson	46	41.5	45	46
Cut Bank	38.5	34.5	34	38.5
Forsyth	45.5	41	42	45.5
Glasgow	45	40.5	42	45
Great Falls	39	35	37.5	39
Hardin	44.5	40	40.5	44.5
Harlowton	39	35	37	39
Havre	38.5	34.5	37.5	39
Helena	38.5	34.5	31.5	39
Judith Gap	39	35	37.5	39
Kalispell	35	31.5	30	35
Laurel	40.5	36.5	37.5	39
Lewistown	39	35	37.5	39
Livingston	39	35	37.5	39
Missoula	36	32.5	27	36
Ringling	39	35	27.5	39
Ryegate	40.5	36.5	37.5	39
Shelby	38.5	34.5	37.5	39
Terry	52	47	43.5	52
Yates	57.5	51.5	46.5	57.5

Nebraska to Omaha, Kansas City, and Chicago

From—	To Omaha				To Kansas City				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Albion	19	17	12	12	25.5	23	18	18	36.5	33.5	27	27
Alliance	25.5	23	22	22	33.5	30	28	28	43	38.5	37	37
Blue Hill	19.5	17.5	14	15	20.5	18.5	18	17	37	33.5	29	30
Cambridge	21.5	19.5	17	18	21.5	19.5	21	20	39	35.5	32	33
Central City	19	17	12	12	23.5	21	18	18	36.5	33.5	27	27
Columbus	15.5	14	10	10	21.5	19.5	16	16	33	29.5	25	25
Culbertson	21.5	19.5	18.5	19.5	23	20.5	22	21	39	35.5	33.5	34.5
Curtis	21.5	19.5	18	19	25.5	23	22	21	39	35.5	33	34
Fairmont	17	15.5	11.5	12.5	20	18	16.5	15	34.5	31.5	26.5	27.5
Fremont	9.5	8.5	10	8.5	17.5	15.5	16	14.5	27	24.5	25	23.5
Grand Island	19.5	17.5	13	13	23.5	21	19	19	37	33.5	28	28
Greeley Center	19.5	17.5	14.5	14.5	26	23.5	20.5	20.5	37	33.5	29.5	29.5
Hastings	19.5	17.5	13.5	14.5	20.5	18.5	18.5	16.5	37	33.5	28.5	29.5
Harvard	19	17	13	14.5	20.5	18.5	17.5	16.5	36.5	33.5	28	29.5
Holdredge	19.5	17.5	15.5	16.5	21.5	19.5	19.5	18.5	37	33.5	30.5	31.5
Kearney	19.5	17.5	14.5	14.5	24	21.5	20.5	20.5	37	33.5	29.5	29.5
Lincoln	11	10	10	9	17	15.5	15	13	28.5	25.5	25	24
Minden	19.5	17.5	14.5	15.5	21.5	19.5	19	17.5	37	33.5	29.5	30.5
Norfolk	16.5	15	12	12	23	20.5	18	18	34	31	27	27
North Platte	21.5	19.5	18	18	28	21.5	24	24	39	35	33	33
Palmer	19.5	17.5	14	14	26.5	23	20	20	37	33.5	29	29
Ravenna	19.5	17.5	14	14	24	21.5	20	20	37	33.5	29	29
Salem	14	12.5	11.5	11.5	13.5	12	12	12	31.5	28.5	26.5	26.5
Schuyler	13	11.5	10	10	21	19	16	16	30.5	27.5	25	25
Spaulding	19.5	17.5	13	13	26	23.5	19	19	37	33.5	28	28
Superior	19.5	17.5	14	14	19.5	17.5	16	16	37	33.5	29	29
Tecumseh	15.5	14	11.5	11	16.5	15	13	13	33	29.5	26.5	26
Venango	21.5	19.5	20.5	21.5	26.5	24	24.5	23.5	39	35.5	35.5	36.5
Wilcox	19.5	17.5	15	16	21.5	19.5	19.5	18	37	33.5	30	31

Nebraska to Texas and Louisiana

From—	To Texas group 3, including Houston and Galveston				To Louisiana group 3, including New Orleans			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Blue Hill	57.5	51.5	39	43	57.5	51.5	44	43
Fairmont	57	51.5	37.5	41	57	51.5	42.5	41
Grand Island	60.5	54.5	40	45	60.5	54.5	45	45
Hastings	57.5	51.5	39.5	42.5	57.5	51.5	44.5	42.5
Holdredge	58.5	52.5	40.5	44.5	58.5	52.5	45.5	44.5
Kearney	61	55	41.5	46.5	61	55	46.5	46.5
Lincoln	51	46	36	39	51	46	41	39
Superior	56.5	51	37	42	56.5	51	42	42
Wilcox	58.5	52.5	40.5	44	60.5	54.5	45.5	44

[fol. 477] North Dakota to Minneapolis, Duluth, and Chicago

From—	To Minneapolis-Duluth				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Antler	22.5	20.5	26	26	35.5	32	38	38
Beach	31	28	28	28	44	39.5	40	40
Carrington	20	18	20.5	20.5	33	29.5	32.5	32.5
Casselton	17.5	15.5	17	17	30.5	27.5	29	29
Conway	18	16	20	20	31	28	32	32
Devil's Lake	19.5	17.5	21	21	32.5	29.5	33	33
Dickinson	28	25	26	26	41	37	38	38
Dunseith	22.5	20.5	25	25	35.5	32	37	37
Esmond	22.5	20.5	23	23	35.5	32	35	35
Fargo	16.5	15	16.5	16.5	29.5	26.5	28.5	28.5
Grafton	17.5	15.5	20	20	30.5	27.5	32	32
Grand Forks	16.5	15	19	19	29.5	26.5	31	31
Hannah	19.5	17.5	22	22	32.5	29.5	34	34
Hebron	26.5	24	25	25	39.5	35.5	37	37
Jamestown	20	18	19.5	19.5	33	29.5	31.5	31.5
Killdeer	31	28	27	27	44	39.5	39	39
Marion	20.5	18.5	19.5	19.5	33.5	30	31.5	31.5
Milnor	19.5	17.5	17.5	17.5	32.5	29.5	29.5	29.5
Neche	17.5	15.5	21	21	30.5	27.5	33	33
Northgate	26.5	24	26	26	39.5	35.5	38	38
Northwood	17.5	15.5	19	19	30.5	27.5	31	31
Pembina	17.5	15.5	21	21	30.5	27.5	33	33
Pingree	20	18	20.5	20.5	33	29.5	32.5	32.5
Portland	17.5	15.5	18.5	18.5	30.5	27.5	30.5	30.5
Rugby	22.5	20.5	23	23	35.5	32	35	35
Sanborn	20	18	19	19	33	29.5	31	31
Scoria	29.5	26.5	27	27	42.5	38.5	39	39
Sharon	19.5	17.5	19	19	32.5	29.5	31	31
Sykeston	20.5	18.5	21	21	33.5	30	33	33
Turtle Lake	25.5	23	24	24	38.5	34.5	36	36
Tuttle	23	20.5	22	22	36	32.5	34	34
Walhalla	17.5	15.5	21.5	21.5	30.5	27.5	33.5	33.5
Williston	27	24.5	27.5	27.5	40	36	39.5	39.5

[fol. 478]

Oklahoma to Kansas City, Chicago, and St. Louis

From—	To Kansas City				To Chicago				To St. Louis			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Altus	35.5	32	23	28	43	38.5	38	43	38	34	32	39
Alva	22.5	20.5	19	20	38	34	34	35	34	30.5	28	31
Anadarko	32.5	29.5	20	26	41	37	35	41	37	33.5	29	27
Antlers	33	29.5	21	27	38.5	34.5	35	42	33	20.5	25.5	38
Ardmore	36.5	33	21	27	44.5	40	36	42	38	34	30	38
Arapaho	33	29.5	21	26	41.5	37.5	36	41	36	32.5	30	37
Buffalo	26	23.5	21	22	42	38	36	37	37	33.5	30	33
Camargo	36	32.5	22	26	43	38.5	37	41	38	34	31	37
Cherokee	22.5	20.5	18.5	20	38	34	33.5	35	34	30.5	27.5	31
Cheyenne	36	32.5	22	28	43.5	39	37	43	38	34	31	39
Chickasha	31	28	20	26	40.5	36.5	35	41	36.5	33	29	37
Cordell	34	30.5	22	26	41.5	37.5	37	41	37.5	33.5	31	37
Durant	36.5	33	21.5	29	40	36	36.5	44	36	32.5	27.5	40
El Reno	29.5	26.5	19	24	40	36	34	39	36	32.5	28	35
Enid	23.5	21	18	20	38.5	34.5	33	35	34.5	31	27	31
Fairview	26.5	24	19.5	23	40	36	34.5	38	36	32.5	28.5	34
Forgan	29	26	23	24	45	40.5	38	39	39	35	32	35
Guthrie	28	25	19	22	40	36	34	37	35	31.5	28	33
Guymon	29	26	22.5	26	43.5	39	37.5	41	42.5	38.5	31.5	37
Hobart	34	30 5	22	27	41.5	37.5	37	42	37.5	33.5	31	38
Hooker	27	24.5	21	24	43	38.5	36	39	40	36	30	35
Hugo	33	29.5	22	28	40	36	37	43	34.5	31	26.5	39
Kingfisher	28	25	19	23	40	36	34	38	35	31.5	28	34
Lawton	33	29.5	21	27	43	38.5	36	42	37	33.5	30	38

Oklahoma to Kansas City, Chicago, and St. Louis

From—	To Kansas City				To Chicago				To St. Louis			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Mangum	35.5	32	23	28	43	38.5	36	43	38	34	32	39
Medford	20	18	18	18	36.5	33	33	33	32.5	29.5	27	29
Muskogee	25.5	23	17	18	37	33.5	32	33	32	29	23.5	29
Newkirk	20	18	17	17	36.5	33	32	32	32.5	29.5	26	28
Norman	31	28	19	25	44	39.5	34	40	37	33.5	28	36
Oklahoma City	29.5	26.5	19	24	40	36	34	39	36	32.5	28	35
Perry	23.5	21	19	20	38.5	34.5	34	35	34.5	31	28	31
Purcell	31	28	20	26	44.5	40	35	41	37	33.5	29	37
Sayre	35.5	32	23	27	43.5	39	38	42	38	31	32	38
Shattuck	29	26	21.5	26	45	40.5	36.5	41	38	34	30.5	37
Tulsa	22.5	20.5	16.5	16.5	36	32.5	30.5	31.5	30	27	23.5	27.5
Vinita	19.5	17.5	14.5	14.5	34.5	31	29	29.5	29	26	20.5	25.5
Watonga	29	26	20	24	40	36	35	39	36	32.5	29	35
Woodward	28	25	20	24	43	38.5	35	39	37	33.5	29	35

Oklahoma to Memphis, Louisiana, and Texas

From—	To Memphis				To Louisiana group 3 [1]				To Texas group 3, including Galveston and Houston			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Altus	31.5	28.5	32	34	40	35	33	34	32	29	26.5	30
Alva	31.5	28.5	31.5	34	45	40.5	36.5	40	36	32.5	31	36
Anadarko	31.5	28.5	29	34	40	36	31.5	36	33	29.5	26.5	32
Antlers	36.5	33	23.5	30	32	28	27	30	31	28	24	30
Ardmore	34.5	31	26.5	34	36	33	28.5	30	30	27	23	29
Arapaho	31.5	28.5	29.5	34	43	38.5	34.5	38	35	31.5	28	34
Buffalo	47	42.5	33	38	48	43	39	43	38	34	33	39
Camargo	31.5	28.5	32.5	34	44	39.5	36	39	36	32.5	29.5	35
Cherokee	34.5	31	31	34	44	39.5	36	40	36	32.5	30.5	36
Cheyenne	37	33.5	31.5	34	45	40.5	36.5	40	36	32.5	31	36
Chickasha	31.5	28.5	28	34	40	36	31.5	36	32	29	26	32
Cordell	31.5	28.5	30.5	34	43	38.5	34	37	34	30.5	27.5	33
Durant	34.5	31	25	32	34	31	28.5	30	29	26	22.5	29
El Reno	31.5	28.5	27.5	34	40	36	32.5	37	33	29.5	26.5	33
Enid	31.5	28.5	29	34	43	38.5	34	39	35	31.5	29	35
Fairview	31.5	28.5	31	34	45	40.5	37	40	36	32.5	31	36
Forgan	43.5	39	34.5	39	43	37	39	44	38	34	34	40
Guthrie	31.5	28.5	27.5	34	40	36	32	38	34	30.5	27.5	34
Guymon	41.5	36.5	38.5	40	50	45	45	45	37	33.5	37	41
Hobart	31.5	28.5	31	34	42	38	33	36	34	30.5	27	32
Hooker	41.5	36.5	37	40	50	45	45	45	38	34	37	41
Hugo	31.5	28.5	23	30	32	29	26	29	30	27	23.5	29
Kingfisher	31.5	28.5	28	34	41	37	33	38	34	30.5	27.5	34
Lawton	31.5	28.5	29.5	34	38	34.5	30.5	35	31	28	25	31

Oklahoma to Memphis, Louisiana, and Texas

From—	To Memphis				To Louisiana group 3 [1]				To Texas group 3, including Galveston and Houston			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Mangum	31.5	28.5	32	34	41	37	34	36	33	29.5	27	32
Medford	31.5	28.5	31	34	44	39.5	35	40	36	32.5	29.5	36
Muskogee	31.5	28.5	23	29	37	33.5	30.5	33	34	30.5	27.5	33
Newkirk	38	34	29.5	34	43	38.5	34.5	40	36	32.5	30.5	36
Norman	31.5	28.5	27.5	34	38	34.5	30.5	35	32	29	28	31
Oklahoma City	31.5	28.5	26.5	34	39	35.5	31	36	33	29.5	26.5	32
Perry	31.5	28.5	29	34	41	37	33	38	35	31.5	28.5	34
Purcell	35.5	32	27.5	34	38	34.5	29.5	35	32	29	26	31
Sayre	31.5	28	31.5	36	43	38.5	36	37	36	32.5	30.5	33
Shattuck	44	39.5	34	37	46	41.5	39	40	38	34	34	36
Tulsa	31.5	28	25.5	30	39	35.5	32	36	35	31.5	29	34
Vinita	29.5	26.5	24	30	39	35.5	31	36	35	31.5	29	35
Watonga	31.5	28.5	29	34	42	38	34	38	35	31.5	28	34
Woodward	43.5	39	32.5	34	45	40.5	37	40	36	32.5	31	36

[1] Part 7 rates were 3 cents less to points west of the Rock Island south from Randolph through Ruston, Alexandria, and Eunice.

[fol. 480]

Oregon-Washington Railroad & Navigation Company main-line and branch-line points in Oregon, west and southeast of Pendleton, and from Oregon Short Line Railroad points on the Burns and Homestead branches, to Portland.

From—	Wheat and coarse grains			
	Present interstate [1]	Present intrastate [1]	Part 7 interstate and intrastate	Prescribed
	Cents	Cents	Cents	Cents
Arlington	16.5	16.5	13	16.5
Baker	26.5	26.5	22.5	26.5
Bend	31	23.5	17.5	24
Cecil	21	19	14.5	20.5
Condon	22.5	20	16	21.5
Crane	38	....	29	36
Elgin	27	26.5	21	27
Enterprise	31.5	29	23	29
Gateway	24	20.5	15.5	21.5
Grass Valley	21.5	18	13.5	19.5
Harper	36	....	26.5	32.5
Heppner	22.5	20.5	15.5	21.5
Hinkle	21.5	20	16	21.5
Homestead	32	32	26	32
Huntington	28	28	23.5	30
Joseph	31.5	29.5	23	30
La Grande	25	25	20.5	26
Lexington	22	20	15	21.5
Maupin	20.5	18.5	14	19.5
Mission	19.5	19.5	17.5	19.5
Pilot Rock	25	22	17.5	22
Redmond	28.5	22.5	17.5	23.5
Rieth	18.5	18.5	17.5	18.5
Riverside	38	38	28	34
Shaniko	22.5	19.5	14.5	20.5
Speece	22	19.5	14.5	20.5
The Dalles	10.5	10.5	11	10.5
Thorn Hollow	20.5	20.5	17.5	20.5
Umatilla	17.5	17.5	15	17.5
Wallowa	31.5	28.5	22.5	29
Wasco	17	16.5	12.5	17

[1] Part 7 rates are the present Oregon intrastate rates; present rates shown in "intrastate" column are the Oregon intrastate rates prior to Part 7.

[fol. 481]

South Dakota to Sioux City, Minneapolis, and Chicago

From—	To Sioux City				To Minneapolis				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Aberdeen	22.5	20.5	17.5	17.5	21	19	18	18	34	31	30	30
Arlington	17.5	15.5	14	14	19.5	17.5	16.5	15	32.5	29.5	28	27
Bonesteel	19	17	14	16	....	....	....	24.5	36.5	32.5	29	31
Chamberlain	19.5	17.5	15.5	15.5	28	25	24	24	34.5	31.5	30.5	30.5
Faith	29.5	26.5	27	27	29.5	26.5	27.5	27.5	42.5	38.5	39.5	39.5
Faulkton	23	20.5	18.5	18.5	25	22.5	20	20	38	34.5	32	32
Gregory	21.5	19.5	15.5	17.5	....	....	....	26	39	35	30.5	32.5
Huron	18	16	15	15	21	19	18	18	34	31.5	30	30
Imlay	33.5	30.5	23	23	36	33	31	31	43.5	39	38	38
Isabel	26.5	24	25	25	26.5	24	25.5	25.5	39.5	35.5	37.5	37.5
Madison	16.5	15	13	13	19	17	17	17	29.5	26.5	28	27
Mitchell	17	15.5	13	13	21	19	19	19	30.5	27.5	28	27
Parker	14.5	13	12	11	20	18	17.5	17.5	28	25	27	26
Pierre	25	22.5	19	19	28	25	22	22	41	37	34	34
Plankinton	17.5	15.5	14	14	24	21.5	21	21	32.5	29.5	29	29
Platte	17	15.5	14	14	27.5	24.5	22.5	22.5	34	31	29	29
Powell	31	28	24	24	33	29.5	27	27	46	41.5	39	39
Presho	24.5	22	18	18	31.5	28.5	26	26	40.5	36.5	33	33
Rapid City	34.5	31.5	25	25	36	33	29.5	29.5	45.5	41	40	40
Redfield	20	18	16	16	21	19	19	18	34	31	31	30
Roscoe	23	20.5	18.5	18.5	25	22.5	20	20	38	34.5	32	32
Salem	16	14.5	12	12	24	21.5	17.5	17.5	30	27	27	27
Scotland	13.5	12	12	11	23.5	21	20.5	19.5	30	27	27	26
Sioux Falls	14	12.5	11	11	18.5	16.5	16.5	16.5	27.5	24.5	26	26

South Dakota to Sioux City, Minneapolis, and Chicago

From—	To Sioux City				To Minneapolis				To Chicago			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Stamford	28	25	21	21	33.5	30.5	29	29	42.5	38.5	36	36
Stickney	17.5	15.5	14	14	26	23.5	22.5	22.5	32.5	29.5	29	29
Tripp	15.5	14	12	12	24	21.5	20.5	20.5	30.5	27.5	27	27
Tyndall	13.5	12	12	11	24.5	22	20.5	19.5	31	28	27	26
Underwood	34.5	31.5	26	26	35	32	29	29	49	44	41	41
Van Metre	28.5	25.5	21.5	21.5	31.5	28.5	24.5	24.5	44.5	40	36.5	36.5
Vilas	17	15.5	13	13	20	18	18.5	17.5	30	27	28	28
Wagner	16	14.5	13	13	26.5	24	21.5	21.5	33	29.5	28	28
Watertown	20	18	16	16	18	16	16	15	31	28	28	27
Wentworth	16.5	15	13	13	19	17	17	17	29.5	26.5	28	27
Winner	23	20.5	17.5	19	....	....	....	27.5	40.5	36	32.5	34
Wolsey	18	16	16	16	21	19	19	18	34	31	31	30
Woonsocket	18	16	14	14	21	19	19	19	31.5	28.5	29	29
Yankton	12	11	11	11	21	19	19.5	19.5	29	26	26	26

[fol. 482] Texas to Kansas City and Texas

From—	To Kansas City				To Texas group 3, including Galveston and Houston			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Amarillo	35	31.5	27	32	33	29.5	30.5	33
Benonine	33	30.5	25.5	29	33	29.5	30.5	33
Canyon	36	32.5	28	34	33	29.5	31	33
Crosbyton	38	34	32	38	33	29.5	29	33
Dalhart	35	31.5	27	32	34	30.5	33	37
Farwell	37	33.5	30	37	37	33	31	37
Floydada	37	33.5	29.5	37	33	29.5	29.5	33
Fort Worth	31	28	29	31	24	21.5	20	25
Higgins	30	27	23.5	27	33	30.5	34	36
Lamesa	39	35	33	39	36	32.5	29	33
Lubbock	38	34	31	38	33	30.5	28	33
Memphis	36	32.5	29	35	33	30.5	27.5	33
Panhandle	35	31.5	26.5	31	33	30.5	32.5	33
Plainview	37	33.5	29.5	37	33	30.5	29.5	33
Stratford	33	30.5	26	29	35	31.5	34	38
Texhoma	32	29	24	28	35	31.5	36.5	38
Vernon	38	34	26.5	31	33	30.5	25	33
Wichita Falls	37	33.5	26	31	33	30.5	23	33

Texas to Memphis, Vicksburg, and Louisiana

From—	To Memphis				To Vicksburg, Miss.				To Louisiana group 3, including New Orleans			
	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat	Present coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Abilene	37.5	34	35	36	37.5	34	30	36	37.1	32.5	35	39
Amarillo	37.5	34	40	37	38	34.5	35	37	37.1	32.4	40	39
Ballinger	37.5	34	36	37	37.5	34	31	37	37.1	32.4	36	39
Benonine	37.5	34	32	37	49.5	44.5	32	37	47.4	41.6	37	39
Big Springs	37.5	34	38	37	37.5	34	33	37	37.2	32.5	38	39
Canyon	43	38.5	40	40	43	38.5	35	40	40.7	35	40	39
Corsicana	36.5	33	27.5	31	36.5	33	22.5	31	35.3	31.8	27.5	31
Crosbyton	46.5	42	40	40	46.5	42	35	40	44.3	36.3	40	39
Dalhart	40	36	40	40	41.5	37.5	36	40	41.2	36.1	40	43
Farwell	46.5	42	40	40	46.5	42	36	40	43.3	35.8	40	43
Floydada	46.5	42	40	40	46.5	42	35	40	43.6	36.2	40	39
Fort Worth	36.5	33	28.5	32	36.5	33	23.5	32	35.3	31.8	28.5	31
Higgins	45	40.5	34	37	45	40.5	35	37	42	36.6	40	40
Lamesa	50	45	40	40	50	45	35	40	46.3	40.4	40	39
Lubbock	46.5	42	40	40	46.5	42	35	40	43	37.6	40	39
Memphis	38	34.5	37.5	37	38	34.5	32.5	37	37.2	32.7	37.5	39
Panhandle	43	38.5	40	37	43	38.5	35	37	40.7	35.3	40	39
Plainview	46.5	42	40	40	49.5	44.5	35	40	41.3	36	40	39
Stratford	40	36	40	40	49.5	44.5	37	40	45.1	38.8	42	44
Texhoma	40	36	40	40	49.5	44.5	38	40	47.4	41.6	43	44
Vernon	38	34.5	33	36	38	34.5	29	36	37.2	32.7	34	36
Wichita Falls	38	34.5	31.5	34	38	34.5	27.5	34	37.2	32.7	32.5	36

[1] Present proportional rates on coarse grains are from 2 to 10 cents lower than those shown when for Mississippi Valley and Southeast.

[fol. 483]

From Washington and Oregon, south of Snake River

From—	To Portland			To Seattle		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribe wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents
Alto, Wash	19	18	19	21	20	21
Ash, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Athena, Oreg	18.5	17.5	18.5	20.5	19.5	20.5
Attalia, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Ayer, Wash	19	18	19	21	20	21
Blakeley, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Blue Mountain, Oreg	18.5	17.5	18.5	20.5	19.5	20.5
Bolles, Wash	19	18	19	21	20	21
Dayton, Wash	19	18	19	21	20	21
Ellwood, Wash	19	18	19	21	20	21
Eureka, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Hadley, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Page, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Pendleton, Oreg	18.5	17.5	18.5	20.5	19.5	20.5
Pleasant View, Wash	19	18	19	21	20	21
Pomeroy, Wash	23	18	19	25.5	20	21
Rulo, Wash	18.5	17.5	18.5	....	....	....
Simmons, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Spofford, Oreg	18.5	17.5	18.5	20.5	19.5	20.5
Starbuck, Wash	19	18	19	21	20	21
Touchet, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Turner, Wash	19	18	19	21	20	21
Waitsburg, Wash	19	18	19	21	20	21
Walla Walla, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Wallula, Wash	18.5	17.5	18.5	20.5	19.5	20.5
Wayland, Oreg	18.5	17.5	18.5	20.5	19.5	20.5
Whiteman, Wash	18.5	17.5	18.5	20.5	19.5	20.5

From Washington and Idaho, north of Snake River

From—	To Seattle			To Portland		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents
Almota, Wash	24	21	24	24	21	24
Colfax, Wash	24	21	24	24	21	24
Cottonwood, Idaho	31	23	26.5	31	23	26.5
Craigmont, Idaho	30	23	26.5	30	23	26.5
Farmington, Wash	24	21	24	24	21	24
Freeman, Wash	24	21	24	24	21	24
Garfield, Wash	24	21	24	24	21	24
Genesee, Idaho	24	21	24	24	21	24
Grangeville, Idaho	31	23	26.5	31	23	26.5
Kendrick, Idaho	24	21	24	24	21	24
Lewiston, Idaho	24	21	24	24	21	24
Moscow, Idaho	24	21	24	24	21	24
Oaksdale, Wash	24	21	24	24	21	24
Palouse, Wash	24	21	24	24	21	24
Peck, Idaho	24	21	24	24	21	24
Plummer, Idaho	24	21	24	24	21	24
Pullman, Wash	24	21	24	24	21	24
Rosalia, Wash	24	21	24	24	21	24
Spangle, Wash	24	21	24	24	21	24
Spokane, Wash	24	21	24	24	21	24
Spring Valley, Wash	24	21	24	24	21	24
Steptoe, Wash	24	21	24	24	21	24
Thornton, Wash	24	21	24	24	21	24

[fol. 484] From Washington (Big Bend district)

From—	To Portland			To Seattle		
	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains	Present wheat and coarse grains	Part 7 wheat and coarse grains	Prescribed wheat and coarse grains
	Cents	Cents	Cents	Cents	Cents	Cents
Adrian	22.5	20.5	22.5	21.5	16.5	21.5
Amber	22	20.5	22	22	19.5	22
Bluestem	27.5	23	27.5	24	20	24
Bruce	21.5	19.5	21.5	21.5	17	21.5
Cheney	22	20.5	22	22	19.5	22
Connell	21.5	19.5	21.5	21.5	17	21.5
Coulee	23	21	23	23	17.5	23
Creston	24	22.5	24	24	19	24
Croskey	22	20.5	22	22	19.5	22
Cunningham	21.5	19.5	21.5	21.5	17	21.5
Davenport	24	23	24	24	20	24
Downs	25	20.5	25	22	18	22
Emden	21.5	20.5	21.5	21.5	18	21.5
Ephrata	24.5	20.5	24.5	21.5	16	21.5
Espanola	27.5	23	27.5	24	20	24
Farrington	21.5	18	21.5	21.5	19	21.5
Hanson	23	21.5	23	23	17.5	23
LaCrosse	21.5	19.5	21.5	21.5	19.5	21.5
Lamont	22	20.5	22	22	19.5	22
Lavista	28	20.5	28	22.5	19.5	22.5
Lind	21.5	19.5	21.5	21.5	17	21.5
Lyons	27.5	23	27.5	24	20	24
Malden	28	20.5	28	24	19.5	24
Marcellus	35.5	20.5	28	21.5	18	21.5
Marengo	21.5	20.5	21.5	21.5	18	21.5
Nagel	21.5	20	21.5	21.5	17	21.5
Neppel	35.5	19.5	26	21.5	17	21.5
Novarra	35	19.5	26	21.5	17	21.5
Odessa	24.5	20.5	24.5	21.5	18	21.5
Omans	24	23	24	24	20	24
Pasco	17.5	17	17.5	17.5	17.5	17.5
Ralston	27	20.5	27	21.5	18	21.5
Reardon	24	23	24	24	20	24
Revere	28	20.5	28	22.5	18	22.5
Riparia	21.5	19.5	21.5	21.5	19.5	21.5
Ruff	35.5	19.5	26	21.5	17	21.5
Schoonover	35.5	20.5	28	21.5	18	21.5
Washtucna	21.5	18	21.5	21.5	18	21.5
West Warden	21.5	19.5	21.5	21.5	17	21.5
Wilbur	24	22	24	24	18.5	24
Wilson Creek	24.5	21	24.5	21.5	17.5	21.5
Winona	21.5	20	21.5	21.5	21	21.5

[fol. 485] Served Dec. 5, 1934.

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of October, A. D. 1934

No. 17000

Rate Structure Investigation

Grain and Grain Products Within the Western District and for Export

This proceeding being at issue upon an order of general investigation by the Commission, and upon complaints and answers on file, and upon investigation and suspension proceedings, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That all common carriers engaged in transportation wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management or arrangement for continuous shipment, subject to the Interstate Commerce Act, operating as such within continental United States, respondents in No. 17000, Part 7, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before April 1, 1935, and thereafter to abstain, from publishing, demanding, or collecting for the interstate transportation of grain and grain products, on domestic shipments within the western district (herein defined as the territory on and west of the Mississippi River, west of Lakes Superior and Michigan, and west of and including Illinois), rates which exceed those prescribed in the appendix to said report; and to cease and desist, on or before the date mentioned, and thereafter to abstain, from practices, including transit, not in accordance with the findings in said report.

It is further ordered, That said respondents, according as they may participate in the transportation, be, and they are

hereby, notified and required to establish, on or before April 1, 1935, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of grain and grain products within the territory described in the next preceding paragraph hereof rates which shall not exceed those prescribed in the appendix of the said report, and practices which are in harmony with the findings in said report.

[fol. 486] It is further ordered, That this order shall continue in force until the further order of the Commission.

And it is further ordered, That the complaints listed in appendix A to the original report herein be dismissed, and that the investigation and suspension proceedings listed therein be discontinued.

By the Commission. George B. McGinty, Secretary. (Seal.)

[fol. 487] EXHIBIT 4 TO COMPLAINT

Interstate Commerce Commission
Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and order of the Commission, filed and entered March 4, 1936, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases as shown in the footnote on the first page of said report, the original of which is now on file and of record in the office of this Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 11th day of December, A. D. 1939.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 488] Served April 21, 1936

21088

INTERSTATE COMMERCE COMMISSION

No. 17000

Rate Structure Investigation, Part 7

Grain and Grain Products Within the Western District and for Export

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[fol. 490] No. 17000 [1]

RATE STRUCTURE INVESTIGATION, PART 7

Grain and Grain Products within the Western District and for Export

Decided March 4, 1936

1. Upon further consideration of the record taken in connection with the report on further hearing, 205 I. C. C. 301.

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[1] This proceeding also embraces 58 formal complaints and suspension proceedings (also subnumbers of some of the complaints) as shown in the statement of issues in appendix A of the original report.

and for the purpose of better effectuating the intent of that report and the order entered in connection therewith, findings in the report on further hearing clarified in some instances and corrected and modified in others.

2. Petitions for reopening or reconsideration of the record, to the extent not heretofore disposed of or covered in substance herein, denied.

3. Interpretation made concerning rate grading at rate of 0.5 cent for each 15 miles between origin key points.

4. Findings as to application of the rate-break combinations interpreted in respect of (a) shipments continuously through or stopped at the rate-break markets, (b) whether the exclusive application of proportional rates from the rate-break markets is required only in instances when prescribed or also when voluntarily established by the carriers, (c) whether proportional rates are required from the rate-break markets to all consuming areas, and (d) the exception of certain origin points or areas within a general rate-break origin territory from the application of the rate-break combinations.

5. Modification made to permit of transit at points other than the rate-break market, but not at the rate-break market on the route through the rate-break market, on the basis of a lower rate applicable over a competing route between the same points, provided that transit is not also taken at the rate-break market.

6. Finding as to equalization of Peoria from Sioux City to the East interpreted to mean that the proportional rate from Sioux City to Peoria, applicable on shipments from beyond Sioux City to Peoria, applies on shipments to Peoria locally as well as when later reshipped to the East.

7. Proportional rates between St. Louis and Chicago, between Peoria and Chicago, and between Peoria and St. Louis, ordered canceled.

8. Proportional rates from Minneapolis and Duluth to Missouri River markets and St. Louis revised.

9. Proportional rates from Kansas City and Omaha to Little Rock, Ark., reduced.

10. Proportional and other rates to New Orleans increased.

[fol. 491] 11. Elimination of line south through Ruston and Eunice as dividing line between Louisiana destination groups affirmed.

12. Finding clarified as to grading of rates from Northern Pacific stations between Wahpeton and Oakes, in North Dakota, to Duluth, in proper relation to the Minneapolis combinations to Duluth from origin territory south of the Wahpeton-Oakes line.

13. Finding as to undue prejudice to Chicago and undue preference of Milwaukee, in the matter of transit on shipments from Illinois, Iowa, and other States to Wisconsin and Upper Peninsula of Michigan is not to be interpreted as requiring the cancelation of transit at Milwaukee and Chicago, and the application of proportional rates from these markets to this general destination territory, as the only means of compliance.

14. Relation of rates from Illinois to Chicago and St. Louis further considered by the prescription of specific key-point rates from Illinois to these markets, from both the north-and-south and the east-and-west lines.

15. The part of northeastern Iowa excepted from the finding as to relation of rates from Iowa to Peoria and Chicago more clearly defined.

16. Finding modified to prescribe rates to Milwaukee not higher than to Chicago from south of the main line of the Santa Fe from Kansas City to Fort Madison, Iowa, in lieu of from south of the Rock Island's main line in Iowa, and from north of the Missouri River (except the main line of the Milwaukee) in Missouri.

17. Key-point rates to Omaha and Kansas City regraded from stations on the Union Pacific between Barton and North Platte in western Nebraska, in order to remove marked differences in rates from western Nebraska and eastern Colorado.

18. Rates from Billings, Mont., increased to Minneapolis, Duluth, and Chicago in order to remove fourth-section departures resulting from higher rates to the same destinations from Great Falls, Mont., directly intermediate to Billings on the Great Northern, and from Hardin, Mont., directly intermediate to Billings on the Burlington through Omaha.

19. Direction given carriers to "pad" proportional rate from Sioux City to Peoria sufficiently to make the combinations on Sioux City from certain stations in South Dakota on and north of the line of the Chicago & North Western extending westerly from Mankato, Minn., to Pierre, S. Dak., equal to the combinations on Minneapolis.

20. Grading of rates from Beach, N. Dak., and contiguous stations on the Northern Pacific modified, in order to remove undue preferences between stations at the North Dakota-Montana border.

21. Investigation and Suspension Docket No. 3278 interpreted as embracing all of Kansas served by respondents' lines as origin territory and all of Missouri on and south of the main line of the Rock Island as destination territory.

22. Creation of an origin group in northern Oklahoma, as defined in the report, on shipments to Kansas City, at a maximum rate of 19 cents, permitted.

23. Rates from Aurora, Carthage, Neosho, and Springfield in Missouri to Louisiana group 3 and New Orleans further considered.

24. Finding as to rates from the southeastern Missouri and North Cape groups (in Missouri) to Memphis clarified.

25. Finding modified to make the rate to Memphis 32 cents from a part of the previously prescribed 34-cent Oklahoma group to Memphis.

[fol. 492] 26. Rates of 33 cents to Texas group 3 and 37 cents to Louisiana group 3 prescribed from a specifically defined origin group in Oklahoma, in lieu of rates ranging from 30 to 36 cents to Texas group 3, and from 33 to 39 cents to Louisiana group 3, from individual key points in Oklahoma.

27. Further consideration given to grading of rates at Oklahoma-Texas border points, in order properly to relate intrastate rates in Oklahoma and interstate rates from Oklahoma to Texas group 1.

28. Finding clarified as to inclusion of Vicksburg and Natchez in the Louisiana groups from Oklahoma.

29. Finding as to prescription of a group rate of 50 cents from the Texas-Oklahoma-Colorado group to New Mexico on and west of the line of the Santa Fe from Belen south to El Paso modified by the prescription of rates ranging from 41 cents to 50 cents.

30. Flat rates from St. Louis to Big Springs, El Paso, and other points in western Texas considered in their relation to flat rates from Texarkana to western Texas, and other adjustments.

31. Flat rates from St. Louis to Arkansas-Louisiana groups reduced.

32. Findings clarified and modified in respect of bases of rates to Pine Bluff and Texarkana, Ark.

33. Finding clarified to make plain that the Texas common-point adjustment, and not the revised southwestern scale, is intended for application on shipments between points in Texas.

34. Relation of interstate and intrastate rates from New Mexico-Texas border points to destinations in Texas further considered.

35. Method prescribed of grading westbound transcontinental rates in California in order to bring about a proper relation between rates at California and Arizona border points.

36. Finding modified in respect of routing of transcontinental shipments to destinations on the Valley line of the Santa Fe and on the coast line of the Southern Pacific, north of Los Angeles.

37. Finding modified as to routing beyond Sacramento and other California junctions of shipments over joint routes from Idaho and Utah to California.

38. Finding modified to permit of westbound rate on corn and eastbound rate on barley lower than the contemporaneous rates on wheat in respect of certain transcontinental movements.

39. Miscellaneous corrections and modifications made.

Supplemental Report on Further Consideration of the Record on Further Hearing

By the Commission:

Previous reports in this proceeding are the original report, 164 I. C. C. 619; a supplemental report on further consideration, 173 I. C. C. 511; and a report on further hearing, 205 I. C. C. 301. The present report is upon further consideration of the record on further hearing, and is for the purpose of clarification and modification of the report on further hearing, and the correction of typographical errors.

The further hearing was granted as a result of the decision in Atchison, T. & S. F. Ry. Co. v. United States, 284 [fol. 493] U. S. 248, requiring vacation of the original order, because of denial of petitions of the carriers for further hearing, designed to show, by bringing the record down to date from the close of the original hearings, that general economic conditions, reflected in the nation-wide depression, had so changed as to make the original order unresponsive to then current conditions.

The rates prescribed in the original report, and in the supplemental report on further consideration, were in effect from August 1, 1931, to February 19, 1932. The old adjustment was restored February 20, 1932. The adjustment prescribed in the report on further hearing became effective July 1, 1935, and is now in effect.

Petitions for modification denied.—Numerous petitions for modification of the findings in the report on further hearing have been filed by both shippers and carriers. These have been carefully considered and, except as their subject matter is covered herein, are hereby denied. They are listed in appendix A.

The reference to page numbers, when not otherwise stated, is to page numbers of the report on further hearing, in volume 205.

Rate grading between stations.—At page 344 appears the following:

> A considerable part of the complaint against the rates checked in by the carriers in the Part 7 revision was due to the grading of the rates between key points, and between those points and other origins. In many instances the carriers blanketed the rate from the farther-distant point too extensively, instead of grading the rates gradually upward. The grading in the revised adjustment herein prescribed should not exceed 0.5 cent for each 15 miles, subject, however, to the prescribed key-point rates as minima.
>
> In checking in the adjustment the carriers inquired whether certain established origin groups, satisfactory to carrier and shipper, must be disrupted in favor of this grading rule. In some instances they asked permission to grade downward from the farther key point rather than upward from the nearer key point. In their petition for modification they ask for a modification of the rule to permit of "such exceptions as may be found necessary to bring about a consistent and harmonious rate adjustment."

The finding as to grading of rates between stations clearly expresses its purpose to be to provide a reasonable spacing of rates from stations of origin located between prescribed origin key points. To meet cross-country competition a reasonable degree of origin grouping is permissible, provided the key-point rates are observed as maxima. When

the key-point rates progress at other than half a cent for each 15 miles, some blanketing at other than 15 miles at half a cent will be necessary. When the key-point progression is less than half a cent for each 15 miles, the rates from intermediate stations will be higher when graded upward [fol. 494] from the nearer key point than when graded downward from the farther key point, and when the key-point progression is more than half a cent for each 15 miles the reverse will be true. One key-point rate must be regarded as being as reasonable as the other, and the grading either way must therefore be regarded as proper.

The application of this grading rule is confined to origin key points. Destination points are not affected.

Clarification as to application of rate-break combinations.—In the previous reports (pages 634-635, original report, page 515, supplemental report on further consideration, pages 333-342, report on further hearing) it was shown that there were published, for application through the rate-break markets, not only the rate-break combinations of local rates to those markets and proportional rates beyond, but also, in some instances, 1-factor through rates lower than those combinations, from the same origins. Inasmuch as a 1-factor through rate takes precedence over any combination of rates between the same points, the transit balances of these 1-factor through rates took precedence over the higher proportional rates outbound from the markets. The result was that on the outbound movement of a shipment stopped in transit at a rate-break market the transit balance was applied in all instances in which the inbound freight bill (surrendered as authority for the outbound movement at less than the local rate) covered a shipment into the rate-break market from which there was a 1-factor through rate less than the rate-break combination, and the proportional rate was applied only in those instances in which there was no such 1-factor through rate.

The finding was to the effect that proportional rates, when published from the markets, must be the exclusive basis of charge, and that, subject to the one exception to be discussed later, 1-factor through rates less than the rate-break combinations between the same points, with their resulting transit balances less than the proportional rates, would not be permitted. Certain clarifications of this general finding are apparently required:

1. At page 342 appears the following:

The finding in the original report that the rate-break combinations must be the exclusive basis of charge on shipments through the rate-break markets, when stopped at those markets, is affirmed.

The inclusion of the words "when stopped at those markets" was in error. The rate-break combinations must be the exclusive basis of charge on all shipments through the rate-break markets to destinations to which proportional rates are published, whether the shipments are stopped at the markets or not, except in certain instances to meet carrier competition over another route, to be later referred to in more detail.

[fol. 495] 2. An apparent misconception of the findings on the part of some of the carriers is that the proportional rates from the rate-break markets must be exclusively applied only in instances in which they have been prescribed by us, and not when voluntarily established by the carriers. The findings require the exclusive application of the proportional rates from the rate-break markets to the destinations to which published, whether prescribed by us or voluntarily established by the carriers.

3. In purported compliance with the findings the carriers in some instances have established proportional rates to destinations and areas to which proportional rates were not previously in effect, in the apparent understanding that only proportional rates could properly be made applicable from the rate-break markets to all destinations. The findings are not to be so interpreted. They were merely to the effect that proportional rates must be the exclusive basis of charge from the rate-break markets to the destinations to which published, not that they must be established to all destinations. For example, transit is permissible at Omaha on shipments from Nebraska to north Pacific coast territory, because there are no proportional rates from Omaha to that territory, and the question of the defeat of proportional rates by lower transit balances from Omaha to that territory cannot arise (page 515, supplemental report on further consideration). Certain destination areas may lend themselves more readily to transit than to proportional rates.

4. The findings are not to be interpreted as permitting of exceptions to the application of the rate-break combinations from specified origins or areas within a general territory of prescribed rate-break application. For example, proportional rates from the Missouri River to Chicago may not be canceled as to grain from Kansas or Colorado, or from specific origins or areas in those States, and 1-factor through rates less than the rate-break combinations established, as exceptions to the rate-break combinations on the Missouri River prescribed for general application from the origin territory west of the Missouri River. Such exceptions from the general basis would bring about the very dual system of proportional rates and transit balances from the rate-break markets to proportional-rate destinations which the general findings were intended to prevent.

Finding as to transit at interior points on routes through rate-break markets modified.—The exception mentioned to the rule for the exclusive application of the rate-break combinations on shipments through rate-break markets provided for the application, in lieu of the rate-break combination through a given market, of a lower rate applicable over a competitive route between the same points, provided that [fol. 496] no transit stop was made at any point on the equalized route (other than the rate-break market) which was not also a transit point on the cheaper route, and provided, further, that no transit stop was made, in any circumstances, at the rate-break market on the equalized route (see discussion under "Exceptions To Meet Carrier Competition", page 645, original report, page 515, supplemental report on further consideration, page 342, report on further hearing). The points other than the rate-break market on the equalized route, are hereinafter referred to as interior transit points.

It has been suggested that the main purpose of the findings in respect of the rate-break combinations (to require the exclusive application of the proportional rates on shipments from the rate-break markets to destinations to which published) would not be violated by so broadening the exception to meet carrier competition as to permit of transit at interior transit points on the route through a given rate-break market, in order to meet the lower rate over the competitive route between the same points, regardless of whether the interior transit points on the equalized route are also transit points on the cheaper route, provided that

transit is not also accorded at the rate-break market on the equalized route. The suggestion may be illustrated as follows:

1. The route of the Northern Pacific-Milwaukee from Duluth to Chicago is through Rush City, Minn., and Minneapolis, 60 miles south of Rush City. On a shipment over this route, stopped in transit at Rush City or Minneapolis or both, the prescribed basis of charge is the rate-break combination of proportional rates of 4.5 cents to Minneapolis and 12 cents beyond. The prescribed proportional rate from Duluth to Chicago is also 12 cents. This rate may also be applied through Minneapolis on shipments not transited on the route through Minneapolis. The contention is that transit may properly be given at Rush City on the proportional rate of 12 cents from Duluth to Chicago, provided that transit is not accorded at Minneapolis, inasmuch as there is no proportional rate from Rush City to Chicago to be defeated by a lower transit balance, and inasmuch also as the continuous movement of the shipment through Minneapolis, after its stop at Rush City, would preclude the possibility of a transit balance lower than the proportional rate on a separate outbound shipment from Minneapolis to Chicago.

2. The route of the Milwaukee from Duluth to Chicago is through Minneapolis and Hastings, Minn., 50 miles southeast of Minneapolis. The prescribed basis of charge on shipments over this route, stopped in transit at Minneapolis or Hastings, or both, is also the Minneapolis combination of 16.5 cents. The contention here also is that transit [fol. 497] may properly be accorded at Hastings on the basis of the proportional rate of 12 cents from Duluth to Chicago, provided that transit is not accorded at Minneapolis.

3. One route of the Missouri Pacific from Kansas City to Memphis is through Sedalia, Mo. The prescribed basis of charge on shipments from Kansas City to Memphis, stopped in transit at Sedalia, is the rate-break combination of proportional rates of 11 cents from Kansas City to St. Louis and 11 cents from St. Louis to Memphis. Millers at Sedalia complain of their inability to transit on the basis of the proportional rate of 18 cents from Kansas City to Memphis, applicable over the direct route of the St. Louis-San Francisco through Springfield, Mo., and also over a longer route of the Missouri Pacific through Carthage and Aurora, Mo.

A modification on the basis suggested would have to rest upon a substantial difference in conditions affecting the interior transit points and the rate-break markets. Determination as to the existence of this difference in conditions requires a comparison of the incidents of transit as accorded at the interior transit points and at the rate-break markets. Transit on a 1-factor through rate, not through a rate-break market, will first be considered.

Transit permits of the drawing of grain into the transit point, and of the later outbound shipment of an equivalent tonnage of that kind of grain or its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the inbound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the inbound grain (or its equivalent in tonnage) or its products. When the outbound shipment is tendered the inbound freight bill is surrendered as authority for the charging on the outbound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the inbound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination.

The foregoing are the mechanics of transit also under the rate-break combination, except that the outbound shipment under that combination is on a definitely published constant factor, instead of on the unpublished and varying difference between the 1-factor rates to the transit point and to final destination. But there is a substantial difference in the effects of the transit operation under the two bases of through charge, due to the inherent difference in the character of the 1-factor through rates with transit and the rate-break combinations.

[fol. 498] Transit under 1-factor through rates is usually confined to points situated on reasonably direct routes, because the publication of 1-factor through rates is ordinarily so confined. In the absence of carrier competition the basis of charge for shipments over markedly circuitous routes is frequently the rate over the direct route plus an out-of-line charge, or is the combination of locals. Also the outbound shipment from the transit point is usually held to the rails of the inbound carrier, when the 1-factor through rate is over one line, and to the rails of the carrier participating

with the inbound carrier in a joint rate via the transit point, when the transportation is over more than one line. Thus transit places a decided limitation upon the freedom of interchange of shipments between carriers out of a transit point well served by carrier facilities.

The through rates resulting from the rate-break combinations are affected by no such restrictions, either as to circuity of routes or choice of outbound carrier, because the proportional rate becomes applicable upon the surrender of a freight bill covering the required amount of inbound tonnage from any origin, and because also the proportional rates are applicable over all lines from the markets to all destinations to which published. Through rates less than the combinations of locals on the rate-break markets are therefore available to transit operators at those markets on all shipments to all destinations to which the proportional rates are published, from all origins, and over all routes through those markets, no matter how circuitous. That this is of substantial advantage to the transit operators at the rate-break markets over the transit operators at the interior transit points is well illustrated in Southwestern Millers' League v. Atchison, T. & S. F. Ry. Co., 24 I. C. C. 552, 554-555.

Commercially, the proportional rate, when applied on the bulk of the traffic out of the market, is of especial benefit to the price-registering markets, such as Chicago, Minneapolis, and Kansas City, as a price stabilizer, because the known equality of outbound charges, enables grain dealers there to compete on an equality in the purchase of grain at country origins. The importance of the proportional rate in this respect is diminished when the lower transit balances become so numerous as to be applied on a substantial volume of the outbound movement, and the uncertainty as to the outbound charge among competing dealers is correspondingly increased. One-factor through rates with transit would exercise no such stabilizing influence on prices unless one transit balance became so universally used as to be recognized as the so-called "going balance," paid by all dealers on the bulk of their shipments, and on which their country grain purchases were generally based. Under 1-factor through rates with transit and varying transit balances, and [fol. 499] with frequent crop shortages in accustomed sources of supply, and other untoward conditions, the availability of such a constant balance is usually not assured.

Under the exclusive application of the rate-break combinations the proportional rate as the one outbound basis of charge from the rate-break market is always assured, together with an adequate supply of inbound billing at all times for surrender in connection with the outbound shipment under that rate.

Transit and the rate-break combinations are two essentially different bases of rates, and one should not be permitted to interfere with the other. Transit at the interior transit points does not interfere with the rate-break combinations, but the rate-break combinations do interfere with transit at the interior transit points, because of the incidental passing of the shipment through a rate-break market on the route sought to be equalized with a cheaper route. This is the situation, despite the fact that the construction of the through charge over that route on the basis of the rate-break combination, in lieu of the 1-factor through rate with transit (under which latter basis transit would usually be given at both the rate-break market and the interior transit point, in order to equalize with a cheaper route), is neither at the request of, nor of primary interest to, the interior transit points.

While it is true that under the rate-break combinations the transit operator located between the country origins of the grain and the first rate-break market has the same choice of outbound carrier from the market as the transit operator at the market, the volume of grain available to him for transportation under the flat rates into the market, under the restricted routing requirements of transit, is not comparable with the volume of grain available to the rate-break market, under the unrestricted routing permitted by the rate-break combinations. The situation is substantially the same as to the volume of country grain available to the transit operator located beyond the first rate-break market. Millers located there usually purchase their grain largely at the first market which is in position to furnish the desired kind of grain, by reason of the general concentration, mixing, and grading of grains incident to the operation of the rate-break market, the direct benefits of which accrue to the grain dealers at the market.

The suggested modification would remove discriminations between interior transit points themselves, such as that between Hastings and Watertown, Wis., resulting from the denial of transit at Hastings and its granting at Watertown,

on the basis of the proportional rate of 12 cents from Duluth to Chicago, the latter because of the location of Watertown as a transit point not only on the route through Minneapolis, but also on a competitive route of the North Western which [fol. 500] does not pass through Minneapolis, in accordance with the exception to the general rule governing the exclusive application of the rate-break combinations, as hereinbefore explained.

Under the suggested modification, the transit operator at the rate-break market on the equalized route would not be relatively more affected by transit at interior transit points on that route than by transit at points on the cheaper route. Nor would his competitive situation be changed in certain instances in which transit has been accorded at interior transit points on the normal route through the rate-break market, as a result of diversion of the shipment over an available route that barely skirts the outer edge of the rate-break market, in order to escape the requirement of the exclusive application of the rate-break combination. An illustration of the former suggestion is afforded in the comparison of the situations at Rush City on the equalized route, and at Watertown on the cheaper route, from Duluth to Chicago. An illustration of the latter is afforded in the transit now being accorded at Rush City, on the basis of the proportional rate of 12 cents from Duluth to Chicago on shipments routed through Bald Eagle Junction, Minn., 25 miles northeast of Minneapolis, although the normal route is through Minneapolis, on the theory that the finding as to the exclusive application of the rate-break combinations, on shipments through the rate-break markets, is not being violated, because technically the shipments do not pass through Minneapolis.

In view of the foregoing considerations, the previous findings and orders are modified to permit of transit, in the discretion of the carriers, at interior transit points on a route through a rate-break market, as those points are hereinbefore defined, on the basis of a lower rate in effect over a competing route between the same points, in order to equalize those points with transit points on the cheaper route, regardless of whether the interior transit points on the equalized route be also transit points on the cheaper route. On all shipments stopped in transit at the rate-break market on the higher-rated route the rate-break combinations will apply. On shipments not stopped in transit at any point on

that route the equalization with the cheaper route may be permitted, in accordance with the previous findings.

Requested Minneapolis transit to Chicago (Investigation and Suspension Docket No. 4134, pending).—In their respective petitions for modification, Duluth and Minneapolis interests ask for transit at Minneapolis on the proportional rate of 12 cents from Duluth to Chicago, the granting of which would result in a transit balance of 7.5 cents, in lieu of the prescribed proportional rate of 12 cents, from Minneapolis to Chicago.

[fol. 501] In their petition for modification, Minneapolis milling interests also seek the establishment on shipments of wheat from the Missouri River markets, Kansas City to Omaha, inclusive, via Minneapolis to Chicago, destined to points east of the Indiana-Illinois State line, of a rate 8 cents higher than the proportional rate over the direct routes from those markets to Chicago, in lieu of the combination of proportional rates to and from Minneapolis prescribed in the previous reports.

Prior to the institution of this proceeding the transit requested at Minneapolis on the rate from Duluth to Chicago was in effect, and the rate from the Missouri River markets via Minneapolis to Chicago was 8 cents over the rate from those markets to Minneapolis, rather than the requested 8 cents over the direct rate from those markets to Chicago.

The carriers proposed the establishment of a rate of 8 cents from Minneapolis to Chicago on shipments of grain products destined to points east of the Indiana-Illinois State line, when made from grain received from the Missouri River markets mentioned, or from Duluth, as emergency rates to expire on a date certain, in schedules under suspension in Wheat Products, Twin Cities to Chicago, Investigation and Suspension Docket No. 4134, hearing in which has been held.

Peoria equalization from Sioux City to the East.—At page 400 it appears that, as a part of the Chicago-Peoria-St. Louis gateway equalization to the East, the proportional rate from Omaha and Kansas City to Peoria was 2 cents less than to Chicago, and the proportional rate from Peoria to the East 2 cents higher than from Chicago, but that the proportional rate from Sioux City to Peoria was the same as from Sioux City to Chicago and therefore, with the rate from Peoria 2 cents higher than from Chicago, to the East, the Peoria combination was 2 cents higher than the Chicago

combination from Sioux City and 2 cents higher than the Peoria or Chicago combination from Omaha and Kansas City. The request of Peoria for an equalization of the Peoria and Chicago gateways from Sioux City to the East was granted.

In checking in the prescribed adjustment the carriers questioned whether the finding contemplated a proportional rate from Sioux City to Peoria 2 cents less than from Sioux City to Chicago, on shipments locally to Peoria, or only on shipments to Peoria as parts of through shipments under the gateway equalization to the East.

In the past the proportional rate from Sioux City to Peoria has been applicable on shipments from beyond Sioux City to Peoria both locally and for beyond. The finding in [fol. 502] question requires the application of the proportional rate from Sioux City to Peoria (2 cents lower than from Sioux City to Chicago) on shipments from Sioux City to Peoria both locally and when reshipped from Peoria to the East or elsewhere.

Proportional rates between Chicago-Peoria-St. Louis ordered canceled.—Some of the specifically prescribed key-point rates in the report on further hearing exceed the combinations of prescribed rates to and from rate-break markets, over reasonably direct routes. Thus the 1-factor through rates to St. Louis exceed the combinations on Peoria by 0.5 cent from Waterloo, Marshalltown and Fort Dodge, by 1.5 cents from Cedar Rapids, and by 2 cents from Algona, all in Iowa; and the 1-factor through rates to Chicago exceed the combinations on St. Louis by 0.5 cent from Glasgow, by 1 cent from Sedalia, Higginsville, Clark, and Columbia, by 1.5 cents from Higbee, and by 2 cents from Milan and Centralia, all in Missouri. This situation arises from the fact that the proportional rates of 3 cents from Peoria to St. Louis and 6 cents from St. Louis to Chicago are substantially lower, relatively, than the general level of the inter-market proportional rates in western trunk-line territory. To conform measurably with the general level of the proportionals these rates should be approximately 4.5 cents and 9 cents respectively. But to increase them to the latter levels would result in further complications in respect of the relation of the direct rates and combinations on Peoria from Illinois, and in respect of the relation of the direct proportional rates and the combina-

tions on St. Louis from the lower Missouri River markets to Chicago.

St. Louis, Peoria, and Chicago are final terminal markets in the western district, situated at the eastern edge of that district. The important proportional rate adjustment in western trunk-line territory is the one to those markets (rather than between them) from the first line of markets at the Missouri River, Minneapolis, and Duluth. On shipments beyond those markets to the East the important adjustment is the equalization of the through charge, by making the outbound reshipping rates from Peoria on trans-Mississippi River traffic, and from St. Louis on all traffic, higher than from Chicago by the amount that the inbound rates to Peoria and St. Louis are lower than to Chicago.

In the original report no proportional rate was prescribed from Peoria to St. Louis, or from St. Louis to Chicago. In the supplemental report on further consideration (page 523) the proportional rate of 5 cents from Peoria to St. Louis, voluntarily published by the carriers, was ordered canceled, because of the inability of Peoria to compete with St. Louis on grain from northern Iowa and the Missouri [fol. 503] River markets to the Southeast, as a result of the required application of the Peoria combinations in lieu of the former adjustment, under which Peoria had the benefit of the lower St. Louis combination by transiting at Peoria on the inbound flat rate to St. Louis.

In the report on further hearing (page 486) proportionals of 3 cents from Peoria to St. Louis and 6 cents from St. Louis to Chicago were prescribed, but even these low proportionals do not permit of a proper relation between the combinations on these markets and the direct rates from many of the country points, as already shown.

On the whole it seems clear that transit at Peoria to St. Louis, and at St. Louis to Chicago, would result in a more consistent and workable adjustment than the rate-break combinations. The change to transit is even more warranted in respect of shipments through Peoria to Chicago from Illinois. The low level of the transit balances would be counterbalanced to a considerable extent by the inbound carrier also receiving the outbound haul, which can be guaranteed under transit, but not under the rate-break combinations.

The proportionals from Peoria to St. Louis and Chicago,

and from St. Louis to Chicago, will be canceled. For similar reasons the rates in the reverse direction between these markets will also be canceled.

Minneapolis-Duluth to Missouri River markets and St. Louis.—At page 486 the prescribed proportional rates are 12 cents from Minneapolis to Chicago and Peoria, 6 cents from Chicago to St. Louis, 3 cents from Peoria to St. Louis, 15 cents from Minneapolis to St. Louis, and 20.5 cents from Minneapolis to Kansas City. To Texas and Louisiana groups the prescribed proportional rates (page 486) are the same from St. Louis and Kansas City. From Minneapolis to the Texas and Louisiana groups, the combinations on St. Louis are therefore lower than on Kansas City by the amount of the difference of 5.5 cents in the proportional rates from Minneapolis to St. Louis and Kansas City.

For many years the rates from Minneapolis to the Southeast were equalized through Chicago, Peoria, St. Louis, Cairo, and other Ohio River gateways east of Cairo. A published rate of 10 cents from Chicago and Peoria to Ohio River gateways from Cairo east to Cincinnati was used in this equalization, and is still in effect. The effect of the prescribed rate of 15 cents from Minneapolis to St. Louis has been not only to make the combination on Chicago 3 cents higher than on Peoria between those markets, but also to make the combinations on St. Louis and Cairo (using the proportional rate of 3 cents voluntarily established by the [fol. 504] carriers from St. Louis to Cairo) less than on Chicago from Minneapolis to Cairo, and therefore to the Southeast.

The foregoing preference of the St. Louis gateway exist on shipments from Minneapolis to the Southwest and Southeast, although to Texas and most of Louisiana the distances are less through Kansas City than through St. Louis, and although to the Southeast the routes through Chicago are as short as, or shorter than, the routes through Peoria, St. Louis, and Cairo.

The prescribed proportional of 15 cents from Minneapolis to St. Louis is the combination of the prescribed proportionals to and from Peoria, and is unduly low. It applies for a distance of 534 miles, compared with the prescribed proportionals of 20.5 cents from Minneapolis to Kansas City, 17.5 cents in the reverse direction from Kansas City to Minneapolis, 470 miles, and 15 cents from Kansas City to Chicago, 451 miles. It is affected by the com-

ponent from Peoria to St. Louis, 3 cents for 150 miles, which has hereinbefore been characterized as one of the lowest proportional rates prescribed throughout the entire western district, and which has been ordered canceled, for the reasons hereinbefore stated.

The cancelation of the proportional from Peoria to St. Louis will permit of the increase in the proportional from Minneapolis to St. Louis to 17.5 cents, which is herein prescribed. This latter rate will more nearly approximate an inherently reasonable level, and will be more in line with the proportional from Minneapolis to Kansas City, which, in the interest of this gateway equalization, will be reduced to 17.5 cents, the same as applies northbound between these markets. It will also bring about a proper relation between the rates from Minneapolis to Cairo and the Southeast through Chicago, Peoria, and St. Louis. Complete equalization in the latter situation would be brought about if the eastern lines, which are not involved in this proceeding except to Cairo, would reduce their proportionals from Chicago to river gateways east of Cairo to 8.5 cents.

What has been said as to the proportional rates from Minneapolis applies with equal force to the proportionals from Duluth, which are the same as from Minneapolis to Chicago, Peoria, and St. Louis, and higher than from Minneapolis by the amount of the proportional from Duluth to Minneapolis (4.5 cents) to Kansas City. The unduly low character of the proportional of 15 cents from Minneapolis to St. Louis is accentuated in its application from Duluth to St. Louis, 671 miles.

Reduction in proportional rate from Kansas City to Little Rock.—At page 486 proportional rates of 20 cents to [fol. 505] Little Rock and Louisiana group 1, and 18 cents to Memphis, are prescribed from Kansas City, for distances of 462 miles, 597 miles, and 463 miles respectively.

A proportional rate of 18 cents from Kansas City to Little Rock will give better recognition to relative mileages from Kansas City to these destinations, and will bring the rates from Kansas and other States which base on Kansas City more in line with the reduced rates hereinafter prescribed from a part of Oklahoma to Memphis (which will be held as maxima at Little Rock, directly intermediate to Memphis from Oklahoma), and is herein prescribed. This revision will be reflected in the proportional rate from

Omaha, which is the combination on Kansas City to Little Rock.

Revised rates to New Orleans.—In their petition the carriers refer to the low level of the prescribed proportional rates from Memphis to New Orleans, and from St. Louis to New Orleans. The latter is the combination on Memphis. The carriers contend that these proportionals are a menace to the entire southeastern adjustment, covered by part 7-A of Docket No. 17000, because of their effect upon the rates to southeastern points intermediate to New Orleans.

The rate from Memphis to New Orleans is relatively the lowest proportional rate prescribed in the entire western district, 8 cents for 391 miles, compared with prescribed proportionals of 15 cents from Memphis to Louisiana group 3 for 393 miles, 11 cents from St. Louis to Memphis for 295 miles, 11 cents from Kansas City to St. Louis for 277 miles, and 12 cents from Minneapolis to Chicago for 407 miles. The prescribed proportional from St. Louis to New Orleans is 19 cents for 693 miles.

The finding is modified to make the proportional rates from Memphis to New Orleans 12 cents, and from St. Louis to New Orleans 23 cents. These rates will be 3 cents instead of the present 7 cents lower than from Memphis and St. Louis to Louisiana group 3.

The rates from Omaha and Kansas City, and from origins in Kansas, Nebraska, Colorado, and other States, are made by combination on Kansas City, St. Louis, or Memphis, or on more than one of these markets. The foregoing modification will therefore result in rates from these origins 4 cents higher to New Orleans than to Louisiana group 3, in lieu of the present inclusion of New Orleans in Louisiana group 3. The rates to New Orleans from Texas and Oklahoma will also be increased 4 cents, in order to preserve relative adjustments.

This revision will bring the rates to New Orleans more in line with the revised southwestern scale, prescribed for application in the Southwest, in the absence of specifically prescribed key-point rates. From Texas, Oklahoma, and origins basing on Kansas City and Colorado gateways to Louisiana group 3, whether New Orleans be included or [fol. 506] excluded, the prescribed rates in the report on further hearing are on approximately the revised southwestern scale for average distances. To New Orleans, now in Louisiana group 3, the prescribed rates in that report,

for average distances, are lower than the revised southwestern scale by about 4 cents from the same origins.

The basis herein prescribed to New Orleans will also apply roughly to points in Louisiana east of the line of the Texas & Pacific south from Marksville through Elba and Melville to Addis, and points on and east of the lines of the Texas & Pacific and Southern Pacific from Addis through Donaldsonville and Thibodaux to Houma.

Elimination of dividing line in Louisiana groupings affirmed.—For many years (except during the period of the rates prescribed in the original report) Louisiana destination groups have been groups 1, 2, and 3, in northern, central, and southern Louisiana, respectively, extending east and west across the State. Under the adjustment in effect prior to this proceeding the proportional rates were the same from St. Louis and Kansas City to these groups, and the combinations on Omaha to Louisiana were higher on St. Louis than on Kansas City by the amount of the difference between the proportional rates from Omaha to Kansas City and St. Louis, which, prior to the original report herein, was 5.5 cents, and under the original report became 7 cents. However, the higher combinations on St. Louis were not charged on Omaha grain, because St. Louis was permitted to transit on basis of the direct rates from Omaha, which were the combinations on Kansas City. St. Louis viewed this transit arrangement as necessary, because the price of St. Louis grain was alleged to be governed by the price at Omaha.

In the original report herein Louisiana was divided into six groups, designated groups 1, 2, and 3, east and west, respectively, by a line running north and south across the State from Randolph through Ruston, Alexandria, and Eunice. In that report the proportional rates to the western groups were made the same from Kansas City and St. Louis, and to the eastern groups 7 cents less from St. Louis than from Kansas City. This relation was effected by reducing the rates to the eastern groups 4 cents from St. Louis and increasing them 3 cents from Kansas City. The result was to make the combinations on St. Louis the same as on Kansas City from Omaha to the eastern groups, and the combinations on St. Louis 7 cents higher than on Kansas City from Omaha to the western groups.

By the establishment to eastern Louisiana of a proportional rate 7 cents less from St. Louis than from Kansas

City for approximately the same average distance from the two markets the through rates on Iowa and Illinois grain became relatively lower than on grain from west of the [fol. 507] Missouri River moving on the Kansas City combinations, not only because the proportional rates were 7 cents lower from St. Louis than from Kansas City, but also, in respect of Illinois grain, because of the relatively lower level of rates from Illinois to St. Louis than from Kansas, Nebraska, and Colorado to Kansas City. There was the same relative advantage to Iowa and Illinois grain over the grain moving into eastern Louisiana from Oklahoma and Texas, by reason of the relatively higher level of rates from the latter States.

In the reopened proceeding, grain interests in Kansas, Missouri, Nebraska, Oklahoma, Colorado, Texas, and at Shreveport, La., also the carriers serving Shreveport, complained of the alleged preferential rates from Illinois and Iowa to eastern Louisiana through St. Louis. They contended that the division of the Louisiana groups in the original report was illogical and impractical, and that the prescription of proportional rates from St. Louis to eastern Louisiana equal to the balances of the proportional rates from Omaha to those groups was tantamount to an attempt to equalize market prices by means of freight rates, in disregard of transportation conditions (in view of the indirect route through St. Louis from Omaha), and created a low and preferential adjustment from St. Louis to the eastern groups on grain from Illinois and Iowa. They regarded as unjustifiable the created difference of 7 cents in rates from St. Louis to eastern and western Louisiana groups, for approximately the same average hauls, over the rails of the same carriers, under substantially similar circumstances and conditions.

On the other hand, St. Louis (and Cairo) advocated a widening of the eastern Louisiana groups, (to which rates were equalized through St. Louis and Kansas City from Omaha) by moving the dividing line farther west.

At pages 400-403 the finding as to the division of Louisiana into east and west groups was rescinded, and the equalization of proportional rates from Kansas City and St. Louis to both eastern and western Louisiana was restored.

St. Louis, Cairo, and Memphis now ask for the restoration of the dividing line between eastern and western

Louisiana. For the reasons already stated the request is denied.

Regrading on Wahpeton-Oakes line in North Dakota to Duluth.—At page 330 rates were prescribed to Duluth 2 cents higher than to Minneapolis from stations on the Great Northern from Yarmouth, Minn., west to Forbes, N. Dak.; and the same as to Minneapolis from stations on the Northern Pacific from Fargo, N. Dak., west to Independence, N. Dak., with appropriate grading of origins between the two lines described.

[fol. 508] An appropriate grading would make the rates to Duluth about 1 cent higher than to Minneapolis from the line of the Northern Pacific from Wahpeton, N. Dak., west to Oakes, N. Dak., between the two lines mentioned. A parity of rates to Duluth and Minneapolis (17.5 cents) was erroneously specifically prescribed from Milnor (page 503), a midway station on the Wahpeton-Oakes line, which prevented a proper grading from stations on either side of Milnor. The rate from Milnor to Duluth should not exceed 18.5 cents.

Concerning proportional rates from Milwaukee to Wisconsin and Michigan.—Prior to the original report liberal transit arrangements were accorded Milwaukee on shipments of grain and its products from Illinois, Iowa, Minnesota, South Dakota, and Missouri River markets, and points basing thereon, to Wisconsin and the Upper Peninsula of Michigan. As a result of our general observations concerning transit in that report (pages 653-654) transit at Milwaukee accorded in tariffs effective between August 1, 1931, and February 19, 1932, in purported compliance with the report, was substantially curtailed.

Upon the reopened record considerable testimony was offered on behalf of Chicago, purporting to establish an undue preference of Milwaukee over Chicago in the matter of transit. In its counter presentation Milwaukee suggested that any such discrimination found to exist should be corrected by augmenting transit at Chicago rather than by curtailing it at Milwaukee.

In the report on further hearing (pages 405-406) the finding was as follows:

The record warrants a finding of undue prejudice to Chicago and undue preference of Milwaukee in the matter

of transit, which should be corrected by a general overhauling of the transit tariffs. * * *.

As a result of this finding, proportional rates were made the exclusive basis of charge from Milwaukee to all of this territory except a narrow strip of eastern Wisconsin and Upper Michigan, immediately north of Milwaukee, along Lake Michigan. To this latter territory transit was continued from the origin States named. Proportional rates to all of the territory in question (on the same relative basis as the new proportionals from Milwaukee) were also made the exclusive basis of charge from Chicago, Duluth, and Minneapolis. Milwaukee complains that this curtailment of transit seriously impairs its ability to compete with transit points in Iowa and other States, and asks that the transit accorded Milwaukee by the carriers, effective August 1, 1931, and on later dates up to February 19, 1932, in purported compliance with the findings in the original report, be reestablished.

[fol. 509] The Milwaukee and North Western, the principal interested carriers, view the present limited transit at Milwaukee as the maximum permitted under the finding quoted. They are willing, however, to grant transit at Milwaukee to certain additional territory in Wisconsin and Upper Michigan, though not as extensively as under the original decision, on the basis of the rates effective over the direct routes (plus arbitraries for out-of-line hauls in some instances) from Illinois, and on the basis of the rates effective over the direct routes, plus arbitraries for out-of-line hauls in all instances, from Iowa and other States. The proposed arbitraries in respect of the shipments from Iowa are the same in amount as the present proportionals, and would be published as arbitraries, in order to avoid the finding which prevents the contemporaneous application of proportional rates and lower transit balances from a market to a given destination.

The carriers hesitate to file tariffs providing for this additional transit territory from Milwaukee, because of the opposition of Minneapolis and Duluth, and because also of the opposition of Chicago unless the proportional rates from Chicago, which that market desires to retain, are made on a basis relatively lower than from Duluth and Minneapolis, in order to permit of the competition of Chicago with Milwaukee's transit balances. Duluth and Minne-

apolis object to a relatively lower basis of rates from either Milwaukee or Chicago than contemporaneously applies from Duluth and Minneapolis.

That the carriers themselves did not view the findings in the original report to require the publication of proportional rates in lieu of transit from Milwaukee to Wisconsin and the Upper Peninsula of Michigan is shown by the comprehensive, though curtailed, transit accorded Milwaukee to this territory in the tariffs filed in purported compliance with that report, to which reference has already been made.

The finding above quoted from the report on further hearing did not require removal of the discrimination found to exist against Chicago by the publication of proportional rates in lieu of transit to this territory, to which proportional rates had not previously been in effect from Milwaukee. The discrimination could have been removed by the granting of transit at Chicago comparable with that accorded at Milwaukee, relative services and out-of-line hauls through the respective markets considered. From Milwaukee this territory lends itself more readily to transit than to rate-break combinations, a view supported by past adjustments of the carriers. Reasonable transit at Milwaukee to this territory should be restored. Whether the transit should be as broad as that accorded during the [fol. 510] period between August 1, 1931, and February 19, 1932, in purported compliance with the order in the original report, will be left to the initial discretion of the carriers. Reasonable relative adjustments from Chicago, Minneapolis, and Duluth, in the form of transit or proportional rates, in the discretion of the carriers, will be necessary. Proportional rates, if continued from these latter markets, will not be lower, relatively, from Chicago than from Minneapolis and Duluth.

Local rates from Illinois to Chicago and St. Louis.—In the original report the finding was that local rates of the so-called north-and-south lines (including the Illinois Central, the Chicago and Eastern Illinois, the Alton, the Wabash, and the Burlington) from Illinois to St. Louis should not be higher than the "lake *por*portionals" for equal distances to Chicago. In the report on further hearing the finding was that the lake proportionals unduly preferred Chicago and unduly prejudiced St. Louis, and should be canceled, and that the local rates from Illinois to Chicago

and St. Louis should be made on the same general basis, according to relative mileages. In neither of these previous reports was there a prescription of specific rates to either market.

Prior to the original report there were local rates from Illinois to both Chicago and St. Louis. To Chicago there were also the lake proportionals, applicable from substantially two-thirds of Illinois, and from the southwestern corner of Indiana, including East St. Louis, Ill., and Evansville, Ind., on a substantially lower level from much of this territory than the local rates. To St. Louis there were no rates lower than the local rates.

The lake proportional to Chicago was 11.5 cents from all of the Illinois territory above described. The local rate to Chicago was 11.5 cents from a considerable part of the same territory, in central Illinois. This was also the measure of the local rate to St. Louis from a larger group than the Chicago local-rate group, but from a much smaller group than the Chicago lake-proportional group. The local rate groupings, enlarged somewhat to Chicago and narrowed slightly to St. Louis, in order to equalize the groupings to the two markets, is observed in connection with the local rate of 11.5 cents to Chicago and St. Louis in the present tariffs, filed in purported compliance with the report on further hearing. Chicago contends that under the local-rate adjustment, which now exclusively applies to both markets, grain can be drawn into St. Louis at relatively lower rates than into Chicago from origins both in and beyond the 11.5-cent group in central Illinois.

The direct routes of the so-called east-and-west lines (including the Pennsylvania, the Baltimore & Ohio, the New [fol. 511] York, Chicago & St. Louis, the Toledo, Peoria & Western, and the Cleveland, Cincinnati, Chicago & St. Louis) to trunk-line territory are not through Chicago. The lake proportionals were the same in amount, and applied from the same territory, as the so-called "rail specifics." The latter were the unpublished divisions of the north-and-south lines of joint rates over the indirect route via Chicago to eastern trunk-line territory, made to equalize the rates over the more direct routes of the east-and-west lines to that territory.

To Chicago the local rates of the east-and-west lines are higher than those of the north-and-south lines. In fact, in

many instances the local rates to Chicago from origins on the east-and-west lines are the combinations of locals to and from junction points between the east-and-west lines and the north-and-south lines. In the report on further hearing (pages 380-382) the finding was that:

From central Illinois to Chicago the rates of the east-and-west lines should not be based on the circuitous routes of those lines, but on distances over the shortest routes, and should be properly related on that basis to the present 11.5-cent group rate from this territory.* * *.

The east-and-west lines have not complied with this finding. Their desire to carry this Illinois grain to the East rather than to Chicago, and thereby to secure to themselves a longer haul than on shipments interchanged with the north-and-south lines to Chicago, is understandable. But the shippers of grain from origins on their lines to Chicago cannot for that reason be deprived of through rates made on the same direct-route mileages, whether single or joint line, as are the other rates herein prescribed for application throughout the western district. This finding does not contemplate short hauling these carriers on shipments to Chicago, within the meaning of the statutory prohibition in that respect. Routing at the prescribed rates may in their discretion be entirely over their own lines, or via their selected junctions with the north-and-south lines, to secure their maximum haul, provided the resulting routes to Chicago are not unreasonably long.

The carriers have not proposed to increase the present 11.5-cent rate from the central Illinois group to either Chicago or St. Louis. That group, as modified since the issuance of the report on further hearing, covers a range of distances from 60 to 185 miles to the two markets. Starting with the rate of 11.5 cents from the revised group as a base we find that a reasonable and nonprejudicial adjustment of local rates from representative origins to Chicago will be that shown in appendix B.

The rates prescribed in appendix B will be applied over all lines serving the key points named, and may not be exceeded at directly intermediate points.

[fol. 512] The prescription of specific rates is confined to Chicago, because the present rates to St. Louis from origins on the north-and-south lines are in proper relation to the prescribed rates to Chicago, except that the 11.5-cent group

to St. Louis on the Alton will be extended about 20 miles farther north. From points on the east-and-west lines to St. Louis the rates will be on the same relative basis as the rates herein prescribed from points on those lines to Chicago.

Northeastern Iowa to Chicago-Peoria.—At pages 378-379, the finding is that the request of Peoria for rates to Peoria 2 cents less than to Chicago from "all of Iowa except the extreme northeastern corner" is fully justified. The carriers request that the portion of northeastern Iowa covered by this exception be more fully defined. The excepted territory will be, roughly, that portion of Iowa on and north and east of the line of the Minneapolis & St. Louis Railroad south from the Iowa-Minnesota border through Manly, Mason City, and Hampton to Marshalltown, thence on and north of the Milwaukee east through Cedar Rapids to the Mississippi River.

Chicago-Milwaukee equalization from Iowa and Missouri.—At page 380, the finding is that the rates to Milwaukee should not be higher than to Chicago from Iowa south of the Rock Island's main line, and from Missouri north of the Missouri River (except the main line of the Milwaukee). The contentions of the Chicago market and of the carriers in opposition to this finding are in part justified. The finding is modified to the extent of not requiring the equalization of Milwaukee and Chicago from south of the main line of the Santa Fe from Kansas City to Fort Madison. The carriers will be expected by appropriate grading to avoid marked differences in rates from stations on and contiguous to the Santa Fe's line described.

Western Nebraska to Omaha and Kansas City.—At page 502, rates to Kansas City are prescribed on the basis of the combination on Omaha from Nebraska stations in the so-called North Platte region, embracing the territory on and north of the main line of the Union Pacific, and on the same basis as to Omaha from Colorado east of the Rocky Mountains, embracing mainly the Colorado common-point group (pages 372-373). Nebraska stations on the Union Pacific from Julesburg, Colo., west through Sidney, Nebr., to Cheyenne, Wyo., were placed in the Colorado common-point group (pages 432-434). The prescribed rates of 14.5 cents to Omaha and 20.5 cents to Kansas City from Kearney, Nebr., and 18 cents to Omaha and 24 cents to Kansas City from North Platte, Nebr., were the only key-point rates

specifically prescribed from points on the Union Pacific main line. The result of the foregoing findings was to make the rates to Kansas City 6 cents higher than to Omaha from ex- [fol. 513] treme western Nebraska, and the same as to Omaha from contiguous stations just across the State line in eastern Colorado; also to make the rates to Omaha 6 cents lower from extreme western Nebraska than from contiguous stations just over the State line in extreme eastern Colorado. This abrupt difference of 6 cents in the rates from western Nebraska and eastern Colorado is the subject of complaint by the Nebraska commission and the Omaha market, as well as by the carriers.

Nebraska interests ask for a reversal of the finding placing Nebraska stations on the Julesburg-Sidney-Cheyenne line in the Colorado common-point group. They suggest a grading upward of the rates on the Union Pacific main line westerly from North Platte at the progression of 0.5 cent for each 15 miles, provided for at page 344. This would result in a rate to Omaha of 21 cents from Barton, the last station in western Nebraska, and from Julesburg, 6 miles west of Barton, in eastern Colorado, and would therefore require reductions in the rates from stations on the Union Pacific in the Colorado common-point group ranging from 5 cents at Julesburg to half a cent on the Julesburg-Sidney-Cheyenne line. These reductions would in turn require similar reductions from contiguous points on the lines of the Union Pacific and Burlington from Julesburg through Sterling, Colo., to Cheyenne.

The grading requirement of 0.5 cent for each 15 miles was not intended for application where it would change specifically prescribed rates. The prescribed Colorado common-point group rate of 26 cents to Omaha and Kansas City is regarded as reasonably low. The rates to Omaha from Nebraska should be graded appropriately into the specifically prescribed Colorado common-point rate rather than with controlling reference to the general finding as to 0.5 cent for each 15 miles. An appropriate adjustment to Omaha would result from grading downward from 24 cents at Barton to 18 cents at North Platte. The intermediate grading will be left to the judgment of the carriers. The rates from the same western Nebraska points to Kansas City will be the combinations on Omaha, with the Colorado common-point rate to Kansas City as maximum. A similar revision will be made in the through rates from western Ne-

braska to points and groups basing on Omaha and Kansas City. No justification has been shown for reversing the previous finding as to the application of the Colorado common-point basis from stations on the Julesburg-Sidney-Cheyenne line of the Union Pacific.

Sheridan, Wyo., to Chicago.—At page 501 the prescribed rates from Billings, Mont., were 39.5 cents to Minneapolis-Duluth, and 51.5 cents to Chicago; and from Hardin, Mont., [fol. 514] 42 cents to Minneapolis-Duluth, and 54 cents to Chicago. These rates to Chicago represent the combinations on Minneapolis. Billings is located on the Great Northern, the Northern Pacific, and the Burlington. Hardin is situated on the line of the Burlington from Billings to Omaha and Chicago, 57 miles southeast of Billings. Routing from Billings to Chicago may be over the Great Northern or Northern Pacific to Minneapolis and connecting lines beyond, or over the Burlington through Hardin and Omaha. Routing from Hardin to Chicago would be over the Burlington through Sheridan, Wyo., and Omaha. Over the Burlington there is therefore a rate from Billings 2.5 cents lower than from Hardin, directly intermediate. Also over the Great Northern there is a departure from the fourth section resulting from rates of 51.5 cents from Billings, and 54 cents from Great Falls and other directly intermediate points in the enlarged central Montana group, prescribed at page 436.

In the best interests of the rate adjustment as a whole these fourth-section departures will be corrected by an increase in the rates from Billings to 42 cents to Minneapolis and 54 cents to Chicago. The rates from Billings and Hardin to Chicago will be the combinations on both Minneapolis and Omaha. This will result in a rate of 39 cents from Hardin and Billings to Omaha. Under an appropriate grading the rate from Sheridan to Omaha will be 35 cents and to Chicago 50 cents.

South Dakota origins on and north of Mankato-to-Pierre line to Peoria.—In the original report (page 662) the rates to Chicago from on and north of the Chicago & North Western from Mankato, Minn., west to Pierre, S. Dak., were required to be made by combination on Minneapolis. As the proportional rate from Minneapolis to Peoria was the same as from Minneapolis to Chicago, the Minneapolis combination from these origins to Peoria became the same as to Chicago. In the report on further hearing (page 507) key-

point rates were prescribed from South Dakota points, including stations on and north of the Mankato-to-Pierre line, to Sioux City, Minneapolis, and Chicago. From certain stations on and north of the Mankato-to-Pierre line the combinations of the prescribed rates to Sioux City and the proportional rate thence to Peoria are less than the combinations on Minneapolis.

There was no intention to make the rates either to Chicago or to Peoria less than the combinations on Minneapolis from stations on and north of the Mankato-to-Pierre line. The restoration of the Minneapolis combination from these South Dakota origins north of that line to Peoria on shipments through Sioux City, by increases in the key-point rates to Sioux City would bring about an improper relation from these and other origins in South Dakota, and would [fol. 515] disrupt the equalization of the Peoria and Chicago gateways on shipments from these origins to the East. The situation will be corrected by adding to the proportional rate from Sioux City to Peoria, in connection with shipments from these stations, figures sufficient to make the combinations on Sioux City equal to the combinations on Minneapolis. This method of making rates, in order to protect the general adjustment, is discussed later herein, in connection with the flat rates from St. Louis to western Texas.

North Dakota-Montana border points to Minneapolis-Duluth.—On the line of the Northern Pacific westerly through North Dakota and Montana the rates immediately prior to July 1, 1935, to Minneapolis-Duluth were 29.5 cents from Beach, N. Dak., and 31 cents from Yates, Wibaux, and Glendive, Mont., 5, 10, and 41 miles respectively west of Beach. As a result of the prescription of key-point rates of 28 cents from Beach (page 503) and 31 cents from Yates (page 501) the rates on July 1, 1935, became 28 cents from Beach and 31 cents from Yates, Wibaux, and Glendive. The effect of the spread of 3 cents between the rates from Beach, on the one hand, and Yates and Wibaux, on the other, was to divert grain receipts from these stations to Beach, a situation complained of by Minneapolis interests with elevators at Wibaux.

There was no intention to make a spread of 3 cents from Beach and the three stations named, immediately west of Beach. The rate of 28 cents from Beach was inadvertently prescribed and should have been 30 cents. A reasonable level and grading, beginning east of Beach, will be 28.5 cents

from Demores, 29 cents from Sentinel Butte, 29.5 cents from Chama, 30 cents from Beach, 30.5 cents from Yates, and 31 cents from Wibaux and Glendive.

Key-point rates were not prescribed to Minneapolis-Duluth from stations on the Ollie branch of the Northern Pacific, south from Beach to Ollie, Mont., 26 miles. In the revision of July 1, 1935, in compliance with the order, no change was made in the rates of 32.5 cents from Thelan and Golva, 34 cents from Carlisle, and 35 cents from Ollie, on this branch. Reasonable rates to Minneapolis-Duluth from these stations will be 30.5 cents from Thelan and Golva, 31 cents from Carlisle, and 32 cents from Ollie. An amended order of August 26, 1935, permitted of the foregoing revisions from Beach, Yates, and Wibaux.

Interior Kansas adjustment (Investigation and Suspension Docket No. 3278).—In the original report (page 673) the proposal of the carriers in Investigation and Suspension Docket No. 3278 to establish from Kansas to southern Missouri (on and south of the Rock Island main line from Kansas City to St. Louis) a comprehensive adjustment of 1-factor through rates, on the basis of an average [fol. 516] of the single-line and joint-line rates prescribed in Oklahoma Corp. Comm. v. Abilene & S. Ry. Co., 101 I. C. C. 116 (the so-called 12244 scale), to be applied for average distances between basic groups of origin and destination, with fixed differentials over or under the basic groups between all the groups, was found not justified, but without prejudice to respondents filing proposed schedules of rates based on the interior scales and groups therein prescribed, using average mileages from or between groups. In the supplemental report on further consideration (page 525) the findings in the original report were affirmed insofar as they condemned the proposed schedules, but were modified as to future rates by requiring the establishment of rates, except from points in extreme southern Kansas from which the routes through Kansas City would be unduly circuitous, by combination on Kansas City. In the report on further hearing (pages 414-415) it was shown that the rates established by the carriers, in accordance with the findings in the original report, were unsatisfactory to interior Kansas shippers, who desired the rates to be made 112 per cent of the contemporaneous rates to Kansas City. The finding was that the schedules proposed in No. 3278 were approved, subject to rates 90 per cent of the revised southwestern scale, for

average distances between groups, as maxima, and that the finding in the supplemental report on further consideration, requiring the establishment of rates made by combination on Kansas City, was modified accordingly.

Some of the carriers interpret the findings in the report on further hearing to require establishment of the prescribed adjustment only from southwestern Kansas to southwestern Missouri, because of the wording of the opening recital of fact (page 414) that "From southwestern Kansas to southwestern Missouri the present rates are * * *" and not to require its establishment from points in Kansas on and north of the main line of the Union Pacific to points on and east of the St. Louis-San Francisco from Kansas City to Springfield, Mo., and that to the territory east of that line the rates should be combinations on Kansas City. Other carriers interpret the findings to cover rates from all of Kansas to all of Missouri on and south of the line of the Rock Island from Kansas City to St. Louis.

In both the original report and the supplemental report on further consideration the discussion of the rates in question is under the caption "Kansas to southern Missouri (Investigation and Suspension Docket No. 3278)." In the original report the statement is that "The proposal here is to cancel the present rates on grain from Kansas to southern Missouri (on and south of the Rock Island main line from Kansas City to St. Louis)." In the report on further hearing the finding (page 414) is that "The proposals of the car-
[fol. 517] riers in I. and S. 3278 are approved, subject to rates 90 per cent of the revised southwestern scale, for average distances between groups, as maxima." The latter finding clearly covers rates from all of Kansas on the lines of respondents in No. 3278 to all of Missouri on and south of the Rock Island's main line from Kansas City to St. Louis, and this finding is not affected by the reference to rates "From southwestern Kansas to southwestern Missouri" in the opening recital of fact.

Oklahoma to Kansas City.—At page 504, key-point rates are prescribed from specific origins in northern Oklahoma to Kansas City, ranging from 16 to 20 cents. The carriers may, if they desire, in response to requests of Oklahoma shipping interests and the Oklahoma commission, establish a maximum rate of 19 cents from an Oklahoma origin group bounded on the north by the Santa Fe from Wakita to Blackwell, the St. Louis-San Francisco thence to Grainville,

thence by air line just north of Ponca City to Fairfax on the Santa Fe, on the east by the Santa Fe southerly from Fairfax to Pawnee, on the south by the St. Louis-San Francisco westerly through Perry and Enid to Augusta, and on the west by the Rock Island northerly from Augusta through Ingersoll to and including Alva.

Southwestern Missouri to Memphis and Louisiana group 3.—In the mimeographed report on further hearing, served upon the carriers, the prescribed rate from Aurora, Carthage, Neosho, and Springfield, in southwestern Missouri, to Louisiana group 3, including New Orleans, was 36 cents, based on the revised southwestern interstate scale for average distances. This rate exceeded the Memphis combination by 1 cent from Aurora and Carthage, and by 3 cents from Springfield. At page 500 of the printed report the prescribed rates to Louisiana group 3, including New Orleans, are 35 cents from Aurora, Carthage, and Neosho, and 33 cents from Springfield, representing the Memphis combinations to New Orleans and 7 cents less than those combinations to Louisiana group 3. The Memphis combination should govern the rates to New Orleans, but not to Louisiana group 3, in view of the finding herein taking New Orleans out of Louisiana group 3. The rates from these origins to Louisiana group 3 will be 36 cents, and to New Orleans will be 39 cents from Aurora, Carthage, and Neosho, and 37 cents from Springfield, and will reflect the increase from 8 cents to 12 cents herein made in the proportional rate from Memphis to New Orleans.

Missouri groups to Memphis.—At pages 415-416 the finding requires continuance of the southeastern Missouri group, and the North Cape group, both in southeastern Missouri, to Memphis at the average of the prescribed rates from each group. At page 499 the table of prescribed rates [fol. 518] from southeastern Missouri to St. Louis, Cairo, and Memphis carries a footnote that "Present groups should be continued but the group rates must not exceed the averages of the prescribed rates." As the southeastern Missouri and North Cape groupings applied only to Memphis, the footnote should be changed to read: "Present southeastern Missouri and North Cape groups will be continued to Memphis, but the group rates will not exceed the averages of the prescribed rates."

Oklahoma to Memphis.—At pages 421-423 a rate of 34 cents is prescribed to Memphis, Tenn., from a revised Okla-

homa origin group bounded on the east by the Santa Fe south from Chilocco through Oklahoma City and Ardmore, and on the west by the Sante Fe southwesterly from the Kansas-Oklahoma border to Woodward, thence the Missouri-Kansas-Texas through Elk City, Altus, and Frederick, representing an area somewhat less than that of the former group, which extended east to the Arkansas border. In most instances the 34-cent rate represented an increase (on wheat) from 31.5 cents. Oklahoma shipping interests and the Oklahoma commission requests a modification of this finding to provide for a maximum rate from this group of 28 cents, which would better compare, it contends, with the prescribed proportional rate of 18 cents from Kansas City to Memphis (representing a reduction on wheat from 24 cents from the Mississippi Valley and 21.5 cents for the Southeast) and with the prescribed flat rates from Colorado, Nebraska, northern Kansas, Iowa, and Illinois to Memphis.

The finding is modified by the division of the prescribed group by the line of the Rock Island southerly from the Kansas border to Aline, the Santa Fe thence to Altus, and the Missouri-Kansas-Texas thence southeasterly to the Texas border. Reasonable maximum rates will be 34 cents from west of this line and 32 cents from on and east thereof. This will enable the carriers to make any necessary grading at border points in the 32-cent and 34-cent groups to meet cross-country competition. In aid of a further reasonable grading the rates will be 35 cents from Cheyenne, 36 cents from Buffalo, 37 cents from Forgan, and 39 cents from Hooker and Guymon, all in Oklahoma, and 32 cents from Wichita Falls, and 34 cents from Vernon, in Texas.

The foregoing modification does not contemplate any change in the present Oklahoma origin group, as prescribed in the report on further hearing, in connection with the prescription of a rate of 30 cents to Memphis, on shipments destined to Tennessee and the Carolinas, for application during the pendency of the southeastern investigation in Part 7-A of Docket No. 17000. Nor does it contemplate [fol. 519] any change in grouping or rates from Oklahoma to Vicksburg.

Oklahoma to Texas-Louisiana group 3.—At pages 418-421, rates were prescribed from Oklahoma key points to Texas and Louisiana groups, as there defined. The prescribed rates ranged from 30 to 36 cents to Texas group 3, and from 33 cents to 39 cents to Louisiana group 3. Okla-

homa shipping interests and the Oklahoma commission advocate the establishment of rates of 32 cents to Texas group 3, and 36 cents to Louisiana group 3, from an Oklahoma origin group embracing the area bounded by a line running northeasterly from the Texas border just west of Hollis and Cheyenne to Fairview, thence easterly just north of Enid, Perry, Pawnee, and Osage to Tulsa, thence southerly just east of Okmulgee, Henrietta, Dustin, and Calvin to Tupelo, thence westerly and southerly through Pauls Valley and Waurika to the Texas border, embracing roughly all of Oklahoma south and southwest from Tulsa, Enid, and Fairview. This request is a departure from their original preference of rates made from specific origins, based on relative mileages, and is made because of the substantial groupings of origins prescribed in other States, principally Texas, and because of the more liberal routing permitted, and the absence of the operation of the 3-way rule, under the group adjustment. The requested rates are perhaps 1 cent lower than the averages of the rates prescribed from the individual key points.

The requested origin grouping seems to be reasonable, and to harmonize better than the specific key-point adjustment with the Texas and other prescribed groupings. This origin grouping will therefore be prescribed, except that the western boundary of the group will be just west of Hollis, Sayre, Arapahoe, and Okeene to Enid, thence as proposed by the Oklahoma interests. Reasonable rates from this group will be 33 cents to Texas group 3 and 37 cents to Louisiana group 3, other Texas and Louisiana destination groups to be related as prescribed in the previous report. Rates from Ardmore, Durant, Hugo, and Antlers should be properly related to the rates prescribed from the new Oklahoma group. No change is contemplated in the prescribed rates from key points beyond the new group area. The rule requiring a maximum grading of 0.5 cent for each 15 miles need not be observed in respect of the relation between the rates from these key points and the prescribed group.

Oklahoma-Texas border points.—At pages 419-420, in the interest of a reasonable relation between the intrastate-scale rates in Oklahoma and the prescribed rates from individual Oklahoma origins to Texas group 1, it is stated:

Unreasonable disparities at the Oklahoma-Texas border will be avoided by grading between the scale rates in Oklahoma and the rates from Oklahoma to Texas group 1 points,

[fol. 520] near the Oklahoma border, such as Chillicothe, Vernon, Wichita Falls, Ringgold, Gainesville, Denison, Sherman, and Paris. This grading will be left to the judgment of the carriers, but in no instance should there be a spread of more than 5 cents between border points in Oklahoma and Texas.

There has been some uncertainty among the carriers as to whether this grading permission is confined strictly to border points or extends to additional points in group 1, such as Marshall and Big Springs, where similar grading necessity exists.

The finding contemplates such modifications of the prescribed adjustment as may be reasonably necessary to effect a harmonious and workable relation between the State and interstate bases, preserving to the greatest possible extent, however, the adjustment prescribed for interstate application.

Oklahoma and other States to Louisiana, Vicksburg, and Natchez.—At page 420, under the heading "Oklahoma to Louisiana" the description of the prescribed Louisiana group 1 includes "also Vicksburg, Miss." At page 423, under the heading "Oklahoma to Vicksburg," the finding is that "From the Oklahoma origin group to Memphis, and Oklahoma points west thereof the rates to Vicksburg will be the same as to Memphis."

The inclusion of Vicksburg in Louisiana group 1 was not intended, as shown by the finding in the next to the last paragraph on page 420 that "The revised Louisiana groupings will be the same as the Part 7 groupings, except for the elimination of the Ruston line," and by the fact that in the Part 7 groupings (original report, page 665) Vicksburg was not specifically included in Louisiana group 1. The description of Louisiana group 2 territory will also be modified to eliminate Natchez. To Vicksburg from origins other than in Oklahoma and Texas, and to Natchez from all origins (except from points in Oklahoma and Texas from which specific rates are herein prescribed) the carriers will establish rates reasonably related to the rates from the same origins to the Louisiana groups, and with reasonable regard for the southeastern and Mississippi Valley adjustments.

Because of an error in printing, the last paragraph on page 420 is confusing. By making the proper transposition, and in the interest of clarity transferring to the end of that

paragraph the last sentence in the next to the last paragraph on page 420, by eliminating Vicksburg and Natchez from the Louisiana groups, and by giving effect to the finding herein taking New Orleans out of Louisiana group 3, the revised finding as to the Louisiana destination groups and their intended groups of origin will be as follows:

Louisiana group 1 will be immediately east of Texas group 1 and will embrace the area east from the Texas-Arkansas line to the Mississippi River and south of the [fol. 521] Vicksburg, Shreveport & Pacific to include Shreveport, Monroe, and Tallulah. Louisiana group 2 will be immediately east of Texas group 2, to the Mississippi River, and south to include the line of the Texas & Pacific, including Natchitoches and Alexandria. Louisiana group 3 will embrace the remainder of the State south of group 2, except points, including New Orleans, east of the line of the Texas & Pacific south from Marksville through Elba and Melville to Addis, and points on and east of the lines of the Texas & Pacific and Southern Pacific from Addis through Donaldsonville and Thibodaux to Houma. This grouping will govern shipments not only from Oklahoma, but also from Texas, and from Kansas, Colorado, and other northern States. The rates to group 1 will be 6 cents, and to group 2 will be 3 cents, less than to group 3.

Texas-Oklahoma-Colorado to Arizona-New Mexico.—At pages 446-448, a rate of 50 cents was prescribed for application from a group embracing eastern Colorado (including Trinidad) and "including roughly all of the panhandles of Texas and Oklahoma, thence on and west of the Missouri-Kansas-Texas from Woodward to Wichita Falls, and the Wichita Valley, Texas & Pacific, and Panhandle & Santa Fe, thence through Abilene, Sweetwater, Lubbock, and Farwell, including branches" to New Mexico on and west of the Belen-El Paso line. This rate was to be "scaled downward to points north of Belen, and upward to points east of Belen, from Colorado; and downward to points east of Belen, and upward to points north of Belen, from Oklahoma and Texas."

Under the 50-cent group rate the carriers have found difficulty in meeting truck competition, and have suggested from the prescribed origin group a reduction to 41 cents to destinations on the Santa Fe from Las Vegas westerly and southerly through Albuquerque, Belen, Rincon, and El Paso

(including also Santa Fe), and a grading upward to 50 cents at Gallup, Silver City, and Hachita, in New Mexico west of that line. They would also make the rate 41 cents from this group to points on the Santa Fe east of Belen to and including Willard, and to stations southerly from Kennedy to Willard. They ask permission to use their own discretion in respect of the grouping and grading of destinations north of Las Vegas and east of Willard which do not readily lend themselves to the prescribed origin grouping, in order to work out an equitable adjustment from eastern Colorado and Texas-Oklahoma, respectively, for these shorter hauls. The adjustment proposed by the carriers seems reasonable and is satisfactory to interests in eastern Colorado and Texas-Oklahoma.

The rates proposed by the carriers from the prescribed origin group to typical destinations are as follows and are herein prescribed:

[fol. 522]	Cents		Cents
Las Vegas	41	Bluewater	46
Albuquerque	41	Wingate	48
Santa Fe	41	Gallup	50
Moriarty	41	Noria	43
Becker	41	Altair	44
Willard	41	Columbus	46
Torrance	41	Victoria	48
Vaughn	41	Hachita	50
El Paso	41	Animas	50
Magdalena	43	Lanark	43
Hockett	43	Aden	44
Deming	45	Deming	45
Faywood	47	Gage	47
Silver City	50	Hawkins	48
Rio Puerco	43	Lordsburg	50
Laguna	45		

Flat rates from St. Louis to western Texas.—At page 419, in connection with the prescribed Texas groups from Oklahoma, it was stated: "The revised groupings and differentials will also govern shipments from Kansas, Colorado, and other northern States." The contention of the carriers is that unworkable adjustments will result if this finding is intended to cover the flat rates from St. Louis. For example, the flat rate from St. Louis to Big Springs, representing the combination of the flat rate to St. Louis

from the Illinois station nearest to St. Louis and the proportional rate of 20 cents from St. Louis, would be 26.5 cents. The addition of 8 cents to this rate, as a differential for the transportation in Texas differential territory west of Big Springs, would make a flat rate of 34.5 cents from St. Louis to El Paso. These rates are compared with rates of 48.5 cents to Big Springs and 61.5 cents to El Paso from St. Louis, which would result from the application of the revised southwestern scale to Big Springs, and from the application of the same scale plus the 8-cent differential to El Paso, with rates to El Paso of 50 cents from the prescribed Oklahoma-Texas-Colorado group (including Sweetwater) and 41 cents under the revised southwestern scale plus differential-territory arbitraries from Sweetwater, and with rates of 35 cents under the revised southwestern scale (and 33 cents under the Texas common-point basis, which is herein prescribed also for interstate application) from Texarkana to Big Springs. Sweetwater and Texarkana are said to be directly intermediate between St. Louis and Big Springs-El Paso over reasonably direct routes.

The carriers checked in a flat rate of 34 cents from St. Louis to Big Springs, thereby clearing the fourth-section relation between the interstate rates from Texarkana and St. Louis by 1 cent. This flat rate was made by adding a minimum of 14 cents to the proportional rate from St. Louis. This procedure is the so-called "padding," [fol. 523] found justified, in principle and practice, in South Dakota R. Co amrs. v. Chicago & N. W. Ry. Co., 85 I. C. C. 217 (page 234), and case there cited. In these cases the finding was that the flat rate resulting from padding, and higher than the combination of the proportional rate and the inbound rate from the nearest station, did not violate the fourth section.

To Texas destinations in the western part of Texas groups 1 and 2 the carriers will be permitted to depart from the group basis in respect of both the local and the proportional rates from St. Louis, by an upward grading sufficient to bring about a reasonable relation between the rates from St. Louis and Texarkana.

They will be given similar permission in respect of the rates from Kansas City, in order to effect a reasonable relation of rates from Kansas City and Oklahoma.

Origins basing on St. Louis and Kansas City will, of course, be similarly affected.

There should also be an appropriate downward grading of the local and proportional rates from Kansas City and St. Louis into the territory east and north of the Texas groups, rather than an undue blanketing of the Texas group 1 rate back to the Kansas border, for example. In their petition for modification the carriers suggest the establishment of proportional rates from St. Louis to Kansas and Oklahoma destinations on the basis of 3 cents higher than the rate-break combinations on Kansas City in the reverse direction, constructed by adding to the prescribed rates from Kansas and Oklahoma origins to Kansas City a proportional rate from St. Louis to Kansas City 3 cents higher than the proportional rate prescribed from Kansas City to St. Louis. Such an adjustment is not warranted.

The flat rate from St. Louis to El Paso may properly be made in reasonable relation to the rate of 41 cents from the prescribed Oklahoma-Texas-Colorado group to El Paso, which will result from the voluntary action of the carriers, as explained elsewhere herein. The rate of 41 cents will apply from Sweetwater to El Paso. The suggested adjustment will bring about an appropriate relation between the rates from St. Louis, Sweetwater, and Texarkana to Big Springs and El Paso.

Flat rates from St. Louis to Arkansas-Louisiana.--In the construction of the flat rates from St. Louis to Arkansas and Louisiana, the carriers added 14 cents to the proportional rates from St. Louis, although such an addition was not necessary to make the flat rates from St. Louis equal to or greater than the flat rates from directly intermediate points, to meet a fourth-section situation such as confronted the carriers in checking in the flat rates from St. Louis to west Texas.

As justification for this action the carriers rely on the contentions that the flat rates from St. Louis, made by [fol. 524] adding 14 cents to the proportional rates from St. Louis, would be reasonably related to other rates prescribed in the report, that the flat rates to Arkansas and Louisiana from Kansas City reflect an addition of 14 cents to the proportional rates from Kansas City, and that the resulting adjustment would harmonize with the adjustment prescribed (pages 415-416, 499) from the North Cape group in Missouri, which extends northward in southeastern Missouri almost up to the switching limits of St. Louis.

The rate prescribed from the North Cape group to Memphis was 18 cents. The carriers made the flat rate from St. Louis to Memphis 19 cents. The latter rate, added to the prescribed proportional of 15 cents from Memphis to Louisiana group 3, results in a through rate of 34 cents. The through rate from St. Louis to Louisiana group 3, under the 14-cent addition to the proportional rate of 26 cents, would be 40 cents. This figure is not required to clear any higher rate from directly intermediate points, a fact which differentiates the situation here presented from the one arising in connection with the relation of rates from St. Louis and Texarkana to Big Springs. Nor is a rate of 40 cents required, or justified, by comparison with the 33-cent rate from the North Cape group. Furthermore, the addition of 14 cents to the proportional rate from Kansas City is not controlling. The so-called padding principle, reflected in the addition to the proportional rate of 14 cents instead of the lowest inbound rate, while recognized as sound by us, is justified only for the purpose of preventing a general breaking down of the rate structure. That necessity existed at Kansas City in connection with the construction of flat rates to the Southwest generally, and existed also at St. Louis in respect of the construction of the flat rates to Big Springs, in order to protect the intermediate adjustment under the fourth section. It does not exist at St. Louis in connection with the construction of the flat rates to Arkansas and Louisiana.

As a practical matter the addition of 14 cents to the proportional rates in making the flat rates from Kansas City to Arkansas and Louisiana is not of the same consequence as the similar addition to the proportional rate in making the flat rates from St. Louis to the same destinations, because most of the Kansas City grain comes from beyond the 14-cent local-rate area, whereas most of the St. Louis grain comes within an inbound flat-rate area of 11.5 cents and less.

An addition of 10 cents to the proportional rates from St. Louis to Arkansas and Louisiana would result in flat rates from St. Louis to these destinations about 3 cents higher than from the intermediate North Cape group, compared with the 7 cents proposed by the carriers. There is here presented no necessity or justification for an addition of more than 10 cents to the proportional rates from St.

[fol. 525] Louis in the construction of the flat rates from St. Louis to Arkansas and Louisiana.

Clarification as to rates to Pine Bluff and Texarkana.—At page 416 the finding is that "To Little Rock the revised southwestern scale will be observed from Oklahoma and Texas, with key-point rates to Memphis as maxima. * * * To Pine Bluff the Little Rock basis will apply from all origins." The carriers question whether under these findings the rates from Oklahoma to Pine Bluff should be made on the basis of the revised southwestern scale, with key-point rates to Memphis as maxima, or on the same basis in cents per 100 pounds as the rates from Oklahoma to Little Rock. The latter basis is the one intended.

On this page the finding further is that "To Texarkana the rates will be the same as to Louisiana group 1 from all origins." This finding is modified so as to include Texarkana in Texas group 1 from Oklahoma, and in the Texas common-point adjustment within Texas.

The application of the prescribed proportional rates to Texarkana of 11 cents from Memphis and 17 cents from Cairo (the former as reduced to 9 cents herein) is not required from Memphis and Cairo to points in Texas group 1.

Texas to Texas.—At pages 354 to 357, and at page 427, the history, extension, and application of the Texas intrastate common-point adjustment are described. Under that adjustment, within the common-point area the rates progress under a mileage scale to 28 cents at 350 miles and are blanketed at a rate of 33 cents for all distances beyond 350 miles. Differentials are added to the basic common-point scale for transportation within differential territory on shipments within that territory, between that territory and common-point territory, and from differential territory through common-point territory into differential territory.

Prior to the report on further hearing the area of the common-point territory extended as far north and west as the line of the Santa Fe from Higgins southwesterly through Amarillo to Wilsey, thence the line of the Santa Fe from Lariat southeasterly through Lubbock and Sweetwater. On the Fort Worth & Denver City within this common-point area, the common-point basis extended west of Plainview, on the Dimmitt branch, only as far as Hart. Higgins is in northeastern Texas, at the Oklahoma border. Farwell is in western Texas, at the New Mexico border.

Wilsey is the first station northeast of Farwell, on the Farwell-Amarillo line. Lariat is the first station southeast of Farwell, on the Farwell-Lubbock line. At Dalhart, Farwell, and Dimmitt a differential of 1 cent was added for the transportation in differential territory.

[fol. 526] At page 427 the finding was that the area of the common-point territory should be narrowed to include approximately the territory within a line drawn just north of the line of the Rock Island from Benonine, at the Oklahoma border, westerly to Amarillo, thence the line of the Santa Fe southerly through Canyon and Plainview to Lubbock, and that the differentials to be added for the transportation in the broadened differential territory north and west of that line, except on the Amarillo-Higgins line, should be the Texas wheat differentials, based on block mileages. These differentials would be 5 cents at Higgins and 4 cents at Dalhart and Farwell, and would result in rates of 38 cents from Higgins and 37 cents from Dalhart and Farwell to the Texas common-point group. A specific rate of 36 cents was set from Higgins, reflecting a differential of only 3 cents, in order properly to relate the rate from Higgins with the interstate rate of 36 cents from Shattuck, Okla., across the State line. The former differences of 3 cents or more between the rates from Higgins and other northern Texas points on the Amarillo-Higgins line, on the one hand, and from Shattuck and other Oklahoma border points, on the other, were the subject of complaint of undue prejudice by the Oklahoma shippers. The removal of this discrimination, and others of like nature in the vicinity of State lines, was sought to be accomplished by the narrowing of the common-point territory.

A departure from the application of the Texas wheat differential, such as was made at Higgins, will also be made at Dalhart, Farwell, and Dimmitt, at which points the differentials will be 3 cents, 1 cent, and 1 cent, respectively. The relatively lower differential at Farwell than at Higgins and Dalhart is justified by an average distance only 17 miles greater from Farwell than from Amarillo to destinations in the common-point group. This modification will result in rates of 36 cents from Dalhart and 34 cents from Farwell, compared with 36 cents from Higgins. The short-line distance from Higgins to the common-point group is not through Amarillo. Except as herein modified the Texas wheat differentials (referred to at page 427) will apply for

transportation in differential territory on shipments within that territory, between that territory and common-point territory, and from differential territory through common-point territory into differential territory. For example, on a shipment from Farwell through common-point territory into differential territory the rate will be the common-point rate plus the modified differential for the transportation between Farwell and the Canyon-Lubbock boundary of common-point territory plus the Texas wheat differential for the transportation beyond the boundary of common-point territory in differential territory.

[fol. 527] From stations on the Spearman branch of the Santa Fe in Texas, including Morse, the differential should be 3 cents over the common-point basis, in order to grade properly into the prescribed rates from Shattuck.

The Texas common-point and differential adjustment, as herein modified, will be reasonable for both interstate and intrastate application in Texas.[2] It is here prescribed for interstate application. It is assumed that it will be prescribed by the Texas commission for intrastate application, in accordance with the cooperative agreement. The common basis on interstate and intrastate shipments will prevent undue preferences and avoid confusion in the publication and application of tariffs, and will be responsive to the requests of both carriers and shippers for a uniform basis of interstate and intrastate rates.

The table of rates from Texas to Texas, at page 508, should be eliminated. The findings in the report on further hearing contemplated no Texas group 3 on shipments between points in Texas, whether strictly intrastate or as parts of interstate shipments. The rates shown in the table are merely the rates resulting from the intrastate Texas common-point adjustment, with differentials over the 33-cent common-point rate included from points such as Dalhart and Stratford, in differential territory.

New Mexico-Texas border points to Texas.—A competitive relation between intrastate and interstate rates similar

[2] The statement at page 427 that "The revised southwestern scale basis herein used as the measure of the southwestern interstate rates should be applied also on Texas intrastate traffic" erroneously found its way into the report and should be stricken out. It is contrary to the general context and findings in that report.

to that between Higgins and Shattuck, at the Texas-Oklahoma border, is found in the relation of rates from Farwell and New Mexico origins at and just beyond the State line.

In Portales Chamber of Commerce v. Atchison, T. & S. F. Ry. Co., 201 I. C. C. 779, the finding was that the then existing rates from the New Mexico origins there in issue were unreasonable and unduly prejudicial to the extent they exceeded the contemporaneous rates from Farwell by 2 cents on wheat and corn from Clovis, by 4 cents on wheat and 3.5 cents on corn from Melrose and Portales, and by 5 cents on wheat and 4.5 cents on corn from Elida, and to the extent they exceeded, from Texico, the contemporaneous rates on wheat and corn from Farwell. Texico is at the State border, opposite Farwell. Clovis is 9 miles, and Melrose 33 miles, west of Farwell. Portales is 18 miles, and Elida 43 miles, south of Clovis.

The Texas common-point adjustment as hereinbefore prescribed for interstate application grades upward into a maximum rate of 33 cents in common-point territory and, [fol. 528] with the prescribed differential of 1 cent from Farwell, results in a prescribed maximum rate of 34 cents from Farwell to that territory.

We find that the rates from these New Mexico origins to Texas common-point territory will be unreasonable to the extent they exceed, as maximum rates, 34 cents from Texico, 35 cents from Clovis, 36 cents from Melrose and Portales, and 37.5 cents from Elida; and to the extent they exceed, for the shorter hauls, rates graded upward in the manner described in connection with the prescription of the interstate basis from Farwell to that territory; plus, in each instance, the Texas wheat differentials for transportation in differential territory, on shipments through common-point territory into differential territory.

We further find that the rates from these New Mexico origins to Texas destinations will be unduly prejudicial to the extent that the difference between the rates from these origins and from Farwell exceeds 1 cent as between Clovis and Farwell, 3 cents as between Melrose-Portales and Farwell, and 3.5 cents as between Elida and Farwell; and to the extent that the rates from Texico exceed the contemporaneous rates from Farwell. These differentials are made less than those prescribed in Portales Chamber of Commerce v. Atchison, T. & S. F. Ry. Co., supra, because of the closer rate relation between stations that will result

from the grading rule of half a cent for each 15 miles, which was prescribed for general application between prescribed key points throughout the western district.

Westbound transcontinental rates to California.—At pages 442-446, a rate of 65 cents is prescribed from transcontinental groups F, G, H, and J, and from the enlarged central Montana group, to all of California. At page 439 a rate of 75 cents is prescribed from the enlarged central Montana group to all of Arizona. In order to remove the spread of 10 cents at the California-Arizona border the carriers seek a modification of the findings to permit of a scaling upward from the 65-cent rate at Daggett and Colton, Calif., into the 75-cent rate at the border, for distances of 160 and 190 miles respectively.

The reduction of this border-point difference is desirable, but the scaling upward from as far back in California as Daggett and Colton is not necessary. The situation may be alleviated by scaling the 65-cent rate to California upward from stations within, say, 35 miles of the border into a maximum of 70 cents at the border, a figure to which the Arizona blanket rate of 75 cents will be scaled downward from Arizona stations within an equal maximum distance of the border.

Routing in California.—At page 450 it is shown, in connection with shipments from Idaho, Utah, Wyoming, and Colorado to destinations on the Southern Pacific's coast line, and the Santa Fe's valley line, north of Los Angeles, [fol. 529] that at the time of the original hearings routing over the Los Angeles & Salt Lake through Los Angeles was permitted to stations only as far north as Santa Barbara, on the coast line, and Mojave, on the valley line; that subsequent to the issuance of the original report that some routing was permitted to destinations as far north as San Luis Obispo, on the coast line, and Bakersfield, on the valley line; and that from eastern transcontinental origins generally this routing was permitted to destinations only as far north as Santa Barbara and Mojave. Los Angeles shippers complained of inability to forward transited shipments from Los Angeles to destinations on the coast and valley lines north of Los Angeles, consisting of mixed carloads of grain from the respective origin territories mentioned, and asked for an extension of the destination territory as far north as Paso Robles, on the coast line, and Fresno, on the valley

line, on shipments via Los Angeles, from all eastern territory. The request was denied, but the finding further was that the destination territory for the routing via Los Angeles should be as extensive on shipments from eastern transcontinental territory as on shipments from Utah, Idaho, western Wyoming, and western Colorado.

It now appears that the transcontinental rates of the Southern Pacific and Santa Fe applied to points as far north as Eureka and Redding, north of San Francisco, on shipments over their long-haul routes through Arizona and Los Angeles, but applied only to points as far north as Santa Barbara and Mojave on shipments through Utah junctions in connection with the Los Angeles & Salt Lake through Los Angeles; also that mixed shipments consisting of grain received at Los Angeles over the respective routes could be forwarded under transit from Los Angeles to destinations on the coast and valley lines north of Santa Barbara and Mojave. This adjustment satisfies the intent of the previous findings, which are modified accordingly.

Routing from Idaho and Utah to California.—At page 450, routing as found in the old tariffs was required in connection with the rates prescribed from Idaho and Utah to California. For example, from southern Idaho to San Francisco the old rates were applicable over the Union Pacific to Wells, Nev., and the Southern Pacific beyond; the Union Pacific to Wells, and the Western Pacific beyond; the Union Pacific to Wells, the Southern Pacific to Sacramento, and the Western Pacific beyond; and the Union Pacific to Wells, the Western Pacific to Sacramento, and the Southern Pacific beyond. A similar adjustment in and out of Sacramento obtained in respect of shipments over the Union Pacific to Ogden and the Southern Pacific beyond, and over the Union Pacific to Salt Lake City and the Western Pacific beyond. The Southern Pacific asks for [fol. 530] modification of this finding to permit routing over its line beyond Sacramento, and not merely from Wells or Ogden to Sacramento. The Western Pacific does not ask for this modification in respect of shipments which it brings into Sacramento and turns over to the Southern Pacific there for shipment outbound. As a matter of fact, the Western Pacific opposes the requested modification.

The long-haul routing provisions of the delivering lines through their Nevada and Utah junctions to destinations

in California from origins on the Union Pacific are amply sufficient to take care of the needs of shippers. The interposition of a third carrier in these routes, where two carriers adequately perform the service, will not be required.

Transcontinental rates westbound on corn and eastbound on barley lower than contemporaneous wheat rates.—At pages 344-345 it is stated that "The finding in the original report as to a common level of rates on wheat and coarse grains is affirmed." Under the old adjustment the rates on coarse grains were the same as on wheat in intermountain territory and in Illinois, and 90 per cent of the wheat rates throughout the remainder of the western district.

Modification is sought by the carriers to permit (1) the establishment of rates on corn 10 cents lower than on wheat (and coarse grains other than corn) from transcontinental group F (the Missouri River cities) and related transcontinental groups to the Pacific coast, and (2) the establishment of rates on barley 6 cents lower than on wheat (and on coarse grains other than barley) from California to transcontinental groups D and E, which include St. Louis, Chicago, and Milwaukee, the principal markets for barley.

The prescribed westbound rate on wheat and coarse grains is 65 cents. The proposed rate on corn is 55 cents. The competitive barge-steamer rate from St. Louis to the Pacific coast is said to be 25.5 cents. That corn will move over the rail routes at this difference in rate over the barge-steamer routes is said by the carriers to be demonstrated by the substantial movement of corn under rates of 50 cents from February 17, 1933, and September 30, 1934, and 55 cents between the latter date and June 30, 1935. These latter rates were published as emergency rates, to expire on a given date, and were not in violation of an order in this proceeding, because they were in effect during the period of the vacation of the order in the original report. The publication of these emergency rates is referred to at page 445, where it is stated, in connection with a discussion of the competition of the barge and Panama Canal routes, that "These conflicting interests must therefore be harmonized as much as possible if the rate structure is to be stabilized."

[fol. 531] The present eastbound rate on barley is the rate of 65 cents found not unreasonable for application on wheat

and coarse grains. The proposed eastbound rate on barley is 59 cents. The competitive rail-and-water rate via New Orleans to St. Louis is said to total 51.55 cents. To this must be added the rail charges to Chicago and Milwaukee on such of the traffic as moves to those markets. Over the ocean routes to Albany and canal-and-lake routes thence to Milwaukee the charge is said to be approximately 40 cents. Despite the apparently narrow margin, if any, between the all-rail and the rail-and-water routes through New Orleans and St. Louis, and the substantial margin of advantage of the water routes through Albany, as shown in respect of shipments to Chicago and Milwaukee, the rail carriers insist that the proposed all-rail rate of 59 cents will retrieve a substantial amount of tonnage to the rail lines.

A westbound corn rate of 55 cents and an eastbound barley rate of 59 cents are now in effect, as emergency rates to expire on specified dates, under authority of our modification of the order in the report on further hearing.

The request here is one from the carriers for permission to make a voluntary reduction in the rates on certain of the coarse grains to a basis lower than the contemporaneous rates on wheat, and on grain products, to meet a competitive situation which is peculiar to the excepted coarse grains, and which will apparently not affect the general adjustment. The request for the modification is granted.

Miscellaneous corrections and modifications.—The foregoing requires amendments to the appendix to the report on further hearing. These amendments and certain corrections of the text, together with minor modifications, are shown below.

Page 329: Under caption "Northbound Rate-Break Combinations to Duluth" change first eight lines to read "To Duluth present through rates are made by combination on Minneapolis from south of the line of the North Western from Mankato westerly to Pierre. The Part 7 revision moved this line northward and made the through rates combinations on Minneapolis from on and south of the line of the Great Northern westerly from Minneapolis through Willmar to but not including Tintah, Minn., thence westerly by imaginary line to the Minnesota-North Dakota State line just south of Fairmont, N. Dak.; thence southwesterly", etc.

Page 354: Under caption "The Shreveport Case" in fifth line, change "regarded" to "regraded."

Page 365: In last line change "201 I. C. C. 799." to "201 I. C. C. 779."

Page 418: Under caption "Oklahoma Joint-Line Rates" change the last sentence "The southwestern rates prescribed [fol. 532] herein will apply for both single-line and joint-line hauls" to "The revised southwestern scale rates prescribed herein will apply for both single-line and joint-line hauls, without grouping, between points in Oklahoma."

Page 432: Under caption "Wyoming-Colorado Grouping and Routing from Colorado Group through Denver", in seventh line change "southwestern" to "southeastern."

Pages 434-435: Under caption "Eastern Nebraska-Kansas Grouping and Joint Hauls from Colorado", add immediately after last sentence on page 435, "subject to prescribed rates of 32 cents to Pittsburg, Kans., 33 cents to Carthage and Joplin, Mo., and 35 cents to Springfield, Mo., from the Colorado origin group from which the prescribed rate to the Missouri River is 26 cents. Rates from Utah and Idaho to these destinations will be related to the rates from Denver in the manner prescribed in Ogden Grain Exc. v. Abilene & S. Ry. Co., 122 I. C. C. 691. Rates from other origins and to other destinations in the same general localities will be adjusted in reasonable relation to the rates here prescribed."

Page 437: In paragraph 3, finding as to rates from Montana is subject to the modification resulting from the specific prescription, in tables at page 501, of rates of 39 cents to Seattle-Portland and 42 cents to Minneapolis-Duluth, as maxima from the central Montana group described in footnote 46 on page 436.

Page 448: In lines 10 and 11 change "same as from eastern Colorado. Trinidad should be included in the latter group" to "same as from eastern Colorado. Trinidad should be included in this new group, also Liberal, Kans. From this new Texas-Oklahoma-Colorado group, including Liberal,".

Page 469: Under "Farm and Field Seeds" reverse footnotes 49 and 50 to make 49 precede "Broomcorn" etc., and 50 precede "Velvet beans" etc. Add as fourth paragraph on page 470 "The foregoing finding is not applicable to the so-called sorghum grains, on which the rates will be those herein prescribed for grain."

Page 486: In table of proportional rates eliminate items to Chicago, from St. Louis and Peoria, to Peoria from Chicago, and to St. Louis from Chicago and Peoria. Change prescribed proportional rates to St. Louis from Minneapolis and Duluth from 15 to 17.5, to Sioux City from Minneapolis from 11.5 to 8.5, to Sioux City from Duluth from 16 to 13, to Kansas City from Minneapolis from 20.5 to 17.5, to Kansas City from Duluth from 25 to 22, to Omaha from Minneapolis from 14.5 to 11.5 and from Duluth from 19 to 16, to New Orleans from Cairo from 16 to 20, from Memphis from 8 to 12, from St. Louis from 19 to 23, from Kansas City from 26 to 30, from Omaha from 32 to 36, and from [fol. 533] Chicago from 25 to 29, to Little Rock from Kansas City from 20 to 18 and from Omaha from 26 to 24, to Texarkana from Memphis from 11 to 9. In table of rates to Louisiana group 3 eliminate figure 2 from prescribed rates from Kansas City and St. Louis; add figure 2 to Part 7 rates from Kansas City, Omaha, St. Louis, Memphis, and Cairo; change footnote 2 to read "Part 7 rates were, to eastern Louisiana 4 cents lower from St. Louis, Cairo, and Memphis, to western Louisiana 3 cents lower from Kansas City and Omaha.

Page 488: In table "Flat Rates (California to Arizona, New Mexico, and El Paso, Tex.)" change prescribed rates to Flagstaff, Ariz., from 55 to 57 from Weed, from 49 to 52 from Marysville, and from 48 to 51 from Sacramento.

Page 490: Eliminate "including New Orleans" from caption "Colorado to Louisiana group 3, including New Orleans."

Page 492: Eliminate "including New Orleans" from caption "Idaho and Utah to Louisiana group 3, including New Orleans."

Page 495: In table "Iowa to Chicago" change prescribed rate from Algona from 20 to 20.5.

Page 496: In table "Iowa to Omaha" change prescribed rate from Shenandoah from 8 to 8.5. Eliminate Merrill, Rock Rapids, Sheldon, and Storm Lake. In table "Iowa to Kansas City" change prescribed rate from Fort Dodge from 19.5 to 19. Eliminate Sheldon and Storm Lake. In table "Iowa to Texas group 3, including Galveston and Houston." Eliminate Sheldon and Storm Lake.

Page 497: In table "Kansas to Kansas City" change prescribed rate from Oswego from 11.5 to 13.5. Eliminate

"including New Orleans" from caption "Kansas to Louisiana group 3, including New Orleans."

Page 498: In table "Minnesota to Duluth, Minneapolis, and Chicago" add Warroad with prescribed rate of 20 cents to Duluth; a reasonably related rate, relative distances considered, to Minneapolis; and combination on Duluth or Minneapolis, whichever is lower, to Chicago.

Page 499: In table "Southeastern Missouri to St. Louis, Cairo, and Memphis" eliminate reference mark 1 from "To St. Louis[1]" and "To Cairo.[1]" In table "Western and northern Missouri to St. Louis and Chicago" change prescribed rate from Gallatin to Chicago from 20.5 to 21.

Page 500: In table "Missouri to Louisiana and Texas" eliminate "including New Orleans" from subcaption "Missouri to Louisiana group 3, including New Orleans" and change prescribed rates from Aurora, Carthage, and Neosho from 35 to 36 and from Springfield from 33 to 36; add to New Orleans 39 from Aurora, Carthage, and Neosho, and 37 from Springfield (Memphis combinations). Elimi- [fol. 534] nate Kansas City, St. Louis, and Sykeston, together with accompanying footnote 1.

Page 501: In table "Montana to Minneapolis-Duluth and Chicago" change prescribed rates to Minneapolis-Duluth from 39.5 to 42 from Billings, and from 31 to 30.5 from Yates; to Chicago from 51.5 to 54 from Billings, and from 43 to 42.5 from Yates. In table "Montana to Seattle-Portland" change prescribed rates from 40.5 to 43 from Billings, and from 39 to 41 from Laurel.

Page 502: In table "Nebraska to Omaha, Kansas City, and Chicago" change prescribed rates to Omaha from 14.5 to 13.5 from Greeley Center, and from 14 to 13 from Palmer; to Kansas City from 21 to 21.5 from Culbertson, from 20.5 to 19.5 from Greeley Center, and from 20 to 19 from Palmer; to Chicago from 29.5 to 28.5 from Greeley Center, and from 29 to 28 from Palmer; add Crookston as a key point with rates of 20 cents to Omaha, 26 cents to Kansas City, and 35 cents to Chicago. In table "Nebraska to Texas and Louisiana" eliminate Lincoln; eliminate "including New Orleans" from subcaption "To Louisiana group 3, including New Orleans."

Page 503: In table "North Dakota to Minneapolis, Duluth, and Chicago" change prescribed rates to Minneapolis-Duluth from 28 to 30 from Beach; to Duluth from 17.5 to 18.5 from Milnor; to Minneapolis-Duluth from 18.5 to 19

from Portland; to Chicago from 40 to 42 from Beach, and from 30.5 to 31 from Portland. Add Bowman as a key point with prescribed rates of 2 to Minneapolis, 31.5 to Duluth, and 39 to Chicago.

Page 505: In table "Oklahoma to Memphis, Louisiana, and Texas" change prescribed rates to Memphis from 34 to 32 from Altus, Anadarko, Ardmore, Arapahoe, Cherokee, Chickasha, Cordell, El Reno, Enid, Fairview, Guthrie, Hobart, Kingfisher, Lawton, Mangum, Medford, Newkirk, Norman, Oklahoma City, Perry, Purcell, and Watonga; from 38 to 36 from Buffalo; from 34 to 35 from Cheyenne; from 39 to 37 from Forgan; and from 40 to 39 from Guymon and Hooker; to Texas group 3, including Galveston and Houston, from 30 to 33 from Altus; from 31 to 33 from Lawton, Norman, and Purcell; from 32 to 33 from Anadarko, Chickasha, Hobart, Mangum, and Oklahoma City; from 34 to 33 from Arapahoe, Guthrie, Kingfisher, Perry, Tulsa, and Watonga; and from 35 to 33 from Enid; to Louisiana group 3 from 34 to 37 from Altus; from 35 to 37 from Lawton, Norman, and Purcell; from 36 to 37 from Anadarko, Chickasha, Hobart, Mangum, and Oklahoma City; from 38 to 37 from Arapahoe, Guthrie, Kingfisher, Perry, Tulsa, and Watonga; and from 39 to 37 from Enid. [fol. 535] Page 507: In table "South Dakota to Sioux City, Minneapolis, and Chicago" change prescribed rates to Sioux City from 18.5 to 19.5 from Roscoe to Minneapolis from 15 to 16 from Arlington and Watertown; to Chicago from 27 to 28 from Arlington, Mitchell, and Watertown. Add Irene and Mobridge as key points with prescribed rates of 18.5 from Irene to Minneapolis, and 22 and 34 from Mobridge to Minneapolis and Chicago, respectively.

Page 508: In table "Texas to Kansas City and Texas" eliminate table of rates from all origins shown "To Texas group 3, including Galveston and Houston." In table "Texas to Memphis, Vicksburg, and Louisiana" change prescribed rates to Memphis and Vicksburg from 34 to 32 from Wichita Falls, and from 36 to 34 from Vernon. Eliminate "including New Orleans" from subcaption "To Louisiana group 3, including New Orleans."

We find that the present rates and practices of respondent carriers are unreasonable and unduly prejudicial to the extent they do not conform to the rates and practices required in the report on further hearing, as corrected, modified, and supplemented herein. The report on further hear-

ing and the order entered in connection therewith are corrected, modified, and supplemented accordingly.

The findings in the report on further hearing, to the extent not modified herein, are affirmed.

An order will be entered accordingly.

Commissioner Aitchison concurs in the result, but adheres to the views expressed in his dissenting expression in the report on further hearing, 205 I. C. C. 480-481.

LEE, Commissioner, concurring in part:

In my concurring-in-part expression to our report on further hearing, 205 I. C. C. 301, I pointed out certain highly objectionable features in the adjustment therein prescribed. Correction of those features would eliminate the necessity for many of the changes here required. So long as that adjustment is continued in effect, however, I think the interpretations of our findings and the changes in the adjustment established pursuant to those findings here required or approved, are on the whole warranted.

SPLAWN, Commissioner, concurring in part:

Many of the readjustments made in the report on further consideration appear to be necessary more effectively to carry out the principles underlying the adjustment prescribed in the report on further hearing and to correct some of the maladjustments which inevitably crept into a report dealing with issues of such magnitude, complexity, [fol. 536] and diversity. My comments on that adjustment and some of its effects appear in my dissenting expression to the prior report in 205 I. C. C. at page 483. My views as there expressed have not changed. The results of this supplemental report and order will be helpful insofar as they go, but in some instances the modifications do not go far enough. For example, further relief should be given the growers of grain in eastern New Mexico, northern Texas, and Oklahoma, particularly with reference to reaching the important consuming territories in south Texas, Louisiana, and the Southeast.

Commissioners Tate and Caskie did not participate in the disposition of this case.

APPENDIX A

Petitioner	Number of petitions filed
Albers Bros. Milling Co	1
Arkansas City Flour Mills Co. et al	1
Atchison, Topeka & Santa Fe Ry. Co. et al	1
Baton Rouge Chamber of Commerce	1
Board of Trade of Cairo	2
Carriers in the Mountain-Pacific Southwest	1
Carriers in the western district	1
Carriers in western trunk-line and southwestern territories	1
Central Missouri Millers Club	1
Commander Larabee Corporation et al	1
Duluth Board of Trade	2
Hall Milling Co	1
J. F. Imbs Milling Co	1
Kansas State Corporation Commission et al	1
L. E. Kipp, agent	1
Los Angeles Grain Exchange	1
Memphis Merchants Exchange	1
Merchants Exchange of St. Louis	10
Montana railroads	1
Nebraska State Railway Commission	1
Northern Pacific Railway Co	1
North Panhandle Grain Shippers Association	1
Ogden Grain Exchange	1
Omaha Grain Exchange	2
Public Utilities Commission of Idaho	1
Sioux City Grain Exchange	2
Texas Industrial Traffic League	2
Tex-O-Kan Flour Mills Co	2
Transcontinental lines	1

[fol. 537]

APPENDIX B

Illinois to Chicago

	Rate Cents		Rate Cents		Rate Cents
Alhambra	14.5	Grayville	15.5	Paris	11.5
Altamont	12.5	Greenup	11.5	Parker	17.5
Alton	14.5	Hammond	11.5	Paxton	11.5
Arcola	11.5	Havana	11.5	Pekin	11.5
Arthur	11.5	Hervey City	11.5	Peoria	11.5
Ashley	14.5	Hillsboro	14.5	Petersburg	12.5
Atlanta	11.5	Hoopeston	11.5	Pontiac	11.5
Belleville	14.5	Hume	11.5	Ramsey	13.5
Bement	11.5	Humrick	11.5	Rantoul	11.5
Benton	16.5	Irving	14	Ridge Farm	11.5
Bloomington	11.5	Jacksonville	14.5	Robinson	13
Boody	11.5	Kansas	11.5	Roodhouse	14.5
Borton	11.5	Karnak	17.5	Rosamond	12.5
Brocton	11.5	Kenney	11.5	St. Elmo	12.5
Bronson	11.5	Lerna	11.5	Salem	14.5
Browns	14.5	Lacon	11.5	Sandoval	14.5
Burlington	9	Lawrenceville	14.5	San Jose	11.5
Cairo	17.5	LeRoy	11.5	Sorento	14.5
Carbondale	16.5	Litchfield	14.5	Shattuck	14.5
Casey	11.5	Livingston	14.5	Shelbyville	12
Centralia	14.5	Lovington	11.5	Sidell	11.5
Champaign	11.5	Mansfield	11.5	Sidney	11.5
Cheneyville	11.5	Marion	16.5	Smithboro	14.5
Clinton	11.5	Maroa	11.5	Springfield	11.5
Cypress	17.5	Marshall	11.5	Staunton	14.5
Danville	11.5	Mattoon	11.5	Stewardson	12
Decatur	11.5	Maysville	14.5	Streator	11.5
Dixon	11.5	Mazonia	9.5	Sullivan	11.5
DeQuoin	16	Midland City	11.5	Taylorville	12.5
Dwight	9.5	Minier	11.5	Thebes	17.5
East St. Louis	14.5	Minonk	11.5	Tuscola	11.5
Edgewood	13	Mitchell	14.5	Urbana	11.5
Edwardsville	14.5	Mode	12	Villa Grove	11.5
Effingham	12	Mound City	17.5	Vandalia	14.5
El Dorado	16.5	Mount Carmel	14.5	Varna	11.5
Farmer City	11.5	Mount Vernon	14.5	Wataeka	11.5
Forrest	11.5	Murrayville	14.5	Washington	11.5
Freeport	12	Neoga	12	Webster	9.5
Gibson City	11.5	Newton	13	Westville	11.5
Gilman	11	Nokomis	12.5	Windsor	12
Girard	13.5	Odin	14.5	Witt	13
Godfrey	14.5	Ohlman	12.5	Woodlawn	14.5
Glen Carbon	14.5	Olney	14.5	Wood River	14.5
Glover	11.5	Otto	9.5		
Goodwine	11.5	Pana	12.5		

[fol. 538] Served April 21, 1936

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C. on the 4th day of March, A. D. 1936

No. 17000

Rate Structure Investigation, Part VII

Grain and Grain Products Within the Western District and For Export

This proceeding being at issue upon an order of general investigation by the Commission, and upon complaints and answers on file, and upon investigation and suspension proceedings, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made; and the Commission having, on October 22, 1934, made and filed its report on further hearing, containing its findings of fact and conclusions thereon; and having on that date entered its order, effective on or before April 1, 1935, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, in which order the said report on further hearing was referred to and made a part thereof; and having, by appropriate subsequent orders, postponed the effective date of the said order to July 1, 1935; and the Commission having further, on the date hereof, upon further consideration of the record made in connection with the report on further hearing, made its supplemental report on further consideration of the record on further hearing, intended to correct, modify, and supplement its said report on further hearing, and the order entered in connection therewith, which said report on further hearing and the order entered in connection therewith, together with the supplemental report on further consideration of the record on further hearing, are hereby referred to and made a part hereof:

It is ordered, That the said report on further hearing and the order entered in connection therewith, the latter as

postponed in effective date, be, and they hereby are, corrected, modified and supplemented, as specified in said supplemental report on further consideration of the record on further hearing to become effective on July 1, 1936, upon notice to this Commission and to the general pubiic by not less than 15 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 539-540] EXHIBIT 5 TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

THE BOARD OF TRADE OF KANSAS CITY, MO., Complainant,

v.

THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Camas Prairie Railroad Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company (Patrick H. Joyce and Luther M. Walter, Trustees), Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), The Chicago, Rock Island and Gulf Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), The Colorado and Southern Railway Company, The Denver and Rio Grande Western Railroad Company, Great Northern Railway Company, Gulf, Colorado and Santa Fe Railway Company, International-Great Northern Railroad Company (Guy A. Thompson, Trustee), The Kansas City Southern Railway Company, Kansas, Oklahoma & Gulf Railway Company, Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), Northern Pacific Railway Company, Northwestern Pacific Railroad Company, Panhandle and Santa Fe Railway Company, San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee), The St. Louis, Brownsville and Mexico Rail-

way Company (Guy A. Thompson, Trustee), St. Louis-San Francisco and Texas Railway Company, St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, Trustees), St. Louis Southwestern Railway Company of Texas, Southern Pacific Company (Pacific Lines), Spokane, Coeur D'Alene & Palouse Railway Company, Spokane, Portland and Seattle Railway Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, The Texas Mexican Railway Company, Union Pacific Railroad Company, The Western Pacific Railroad Company, Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), Defendants

Amended Complaint

No. 27628

Kansas City, Mo., January 29, 1937.

[fol. 541] The complaint of the above-named complainant respectfully shows:

I

That The Board of Trade of Kansas City, Mo., is a voluntary association, organized not for profit, of dealers in grain and grain products, including flour millers and feed manufacturers, located in Kansas City, Mo.-Kans., and is the governing body of the grain exchange of Kansas City, Mo.-Kans. That the principal office of said association is located in Kansas City, Missouri.

II

That the defendants above-named are common carriers engaged in the transportation of property by railroad between the points hereinafter mentioned or referred to, and as such common carriers are subject to the provisions of the interstate commerce act.

III

That Kansas City, Mo.-Kans., is a large terminal grain market, annually receiving and shipping large quantities of grain and the products of grain. That complainant's members operate in Kansas City numerous plants for the storage, cleaning, drying, and other handling of grain, known as elevators, and numerous other plants for the con-

version of grain into products, known as flour mills or feed manufacturing plants.

IV

That in the day-to-day conduct of their business complainant's members receive grain in carloads from various points over the defendants' lines of railroad to Kansas City, Mo.-Kans., where it is unloaded into the industries referred to in paragraph III, and subsequently ship said grain or the products thereof, in carloads over defendants' [fol. 542] lines to various destinations throughout the United States. That said grain and products are reshipped under the provisions of the defendants' applicable transit tariffs, which permit the stopping of grain in transit for the purpose of storing, cleaning, milling, manufacturing, etcetera, as follows:

The Alton Railroad Company tariffs I. C. C. Nos. 120 and 131.

The Atchison, Topeka and Santa Fe Railway Company tariff I. C. C. No. 12510.

Chicago, Burlington & Quincy Railroad Company tariff I. C. C. No. 18818.

Chicago Great Western Railroad Company tariff I. C. C. No. 5378.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company tariff, I. C. C. No. B-6813.

The Chicago, Rock Island and Pacific Railroad Company tariffs, I. C. C. Nos. C-12611 and C-12619.

The Kansas City Southern Railway Company tariff I. C. C. No. 4838.

Missouri-Kansas-Texas Railroad Company tariff I. C. C. No. 1006.

Missouri Pacific Railroad Company tariff I. C. C. No. A-8768.

St. Louis-San Francisco Railway Company tariff I. C. C. No. 10048.

Union Pacific Railroad Company tariff I. C. C. No. 4335.

Wabash Railway Company tariff I. C. C. No. 6990.

Western Trunk Lines tariff, L. E. Kipp's I. C. C. No. A-2739; J. R. Peel's I. C. C. No. 2853.

V

That defendants publish and maintain so-called proportional rates for the transportation of grain or the products

thereof in carloads from Kansas City to points in the states of Missouri, Illinois, Iowa, Minnesota, Wisconsin, Kansas, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, and Mississippi and to points beyond basing thereon.

That defendants' tariffs provide that when grain or the products thereof are reshipped from Kansas City to said destinations, the said proportional rates are the exclusive basis of charge for the transportation from Kansas City to said points. Such provision is contained in all the tariffs enumerated in paragraph IV hereof, but the following are typical:

[fol. 543] 1. "From points from which proportional rates are published to the transit destination, no basis lower than such proportional rates will apply under transit" (paragraph (d) of Item 5 on page 10 of L. E. Kipp's tariff I. C. C. No. A-2739).

2. "On all shipments stopped for transit at a rate break point, the combination of rates to and from such rate break point will apply" (Item 305 on page 9 of The Chicago, Rock Island and Pacific Railway Company tariff I. C. C. No. C-12619).

That the effect of said provisions is to require complainant's members using transit privileges to pay the full combination of rates to and from Kansas City regardless of any lower through rate applicable over the same route.

VI

That in numerous instances through rates are maintained from the origins referred to in paragraph IV to destinations referred to in paragraph V by way of Kansas City which are less than the corresponding and contemporaneously applicable combinations of rates to Kansas City and proportional rates therefrom. Examples of such rates are the following:

1. The rate on grain from San Antonio, Texas, to St. Louis, Missouri, via Kansas City is 44 cents per 100 pounds (J. R. Peel's I. C. C. No. 2731), while the combination of local rate, 40 cents from San Antonio to Kansas City (J. R. Peel's I. C. C. No. 2731), and proportional rate from Kansas City to St. Louis, 11 cents (L. E. Kipp's I. C. C. No. A-2590), is 51 cents.

2. The proportional rate on grain from Omaha, Nebraska, to St. Louis, Missouri, via Kansas City, is 13 cents per 100 pounds, while the combination of proportional rate, 6 cents from Omaha to Kansas City and proportional rate from Kansas City to St. Louis, 11 cents, is 17 cents (L. E. Kipp's I. C. C. No. A-2590).

[fol. 544] That the foregoing are illustrations only, and this complaint is directed to these and every similar situation where the combination of rates to and from Kansas City exceeds an applicable through rate over the same route.

VII

That in every such instance alleged in paragraph VI defendants by their tariffs permit grain to be transported from origin to various transit points located on the same route and said grain or its products to be reshipped therefrom under transit privileges to destination on the basis of the lowest applicable through rate for direct transportation, notwithstanding said rate is less than the corresponding combination of the rate to Kansas City and the proportional rate therefrom, which is the exclusive basis for similar transit privileges at Kansas City.

That in such instances defendants' tariff also authorize transit privileges at intermediate points on routes other than via Kansas City on the basis of the same through rate for direct transportation as in effect via Kansas City for direct through transportation.

That transit privileges as aforesaid at points other than Kansas City are authorized by the tariffs enumerated in paragraph IV hereof and also the following tariffs:

Chicago, Burlington & Quincy Railroad Company tariff I. C. C. No. 18532, Missouri-Kansas-Texas Railroad Company tariff I. C. C. No. 1033.

That representative of said transit points are the following localities:

[fol. 545] Abilene, Kansas
Albert Lea, Minnesota
Ardmore, Oklahoma
Arkansas City, Kansas
Auburn, Nebraska
Aurora, Missouri
Blackwell, Oklahoma
Blodgett, Missouri
Boonville, Missouri
California, Missouri
Carthage, Missouri
Cedar Falls, Iowa
Cedar Rapids, Iowa
Chamois, Missouri

Chanute, Kansas
Charleston, Missouri
Cherryvale, Kansas
Chickasha, Oklahoma
Claflin, Kansas
Clay Center, Kansas
Clinton, Missouri
Clinton, Oklahoma
Coffeyville, Kansas
Concordia, Missouri
Crete, Nebraska
Dallas, Texas
Davenport, Iowa
Delta, Missouri
Denver, Colorado
Des Moines, Iowa
Dexter, Missouri
Dodge City, Kansas
Durant, Oklahoma
Edgerton, Missouri
El Reno, Oklahoma
Emporia, Kansas
Enid, Oklahoma
Enterprise, Kansas
Essex, Missouri
Falls City, Nebraska
Faribault, Minnesota
Fort Scott, Kansas
Fort Smith, Arkansas
Fort Worth, Texas
Frederickstown, Missouri
Great Bend, Kansas
Hastings, Minnesota
Hays, Kansas
Hermann, Missouri
Higbee, Missouri
Higginsville, Missouri
Hutchinson, Kansas
Inman, Kansas
Iowa City, Iowa
Jackson, Missouri
Jefferson City, Missouri
Jonesboro, Arkansas
Joplin, Missouri
Kingfisher, Oklahoma
Kingman, Kansas
Lamar, Missouri
Lawrence, Kansas
Lees Summit, Missouri
Lincoln, Nebraska
Lindsborg, Kansas
McAlester, Oklahoma
McPherson, Kansas
Mankato, Minnesota
Marshall, Missouri
Mason City, Iowa
Mexico, Missouri
Muscatine, Iowa
Muskogee, Oklahoma
Nebraska City, Nebraska
Neosho, Missouri
New Haven, Missouri
Newton, Kansas
Oklahoma City, Oklahoma
Oran, Missouri
Osage, Missouri
[fol. 546] Oswego, Kansas
Ottawa, Kansas
Pacific, Missouri
Pine Bluff, Arkansas
Pittsburg, Kansas
Pleasant Hill, Missouri
Pleasanton, Kansas
Poplar Bluff, Missouri
Russell, Kansas
Salina, Kansas
Salisbury, Missouri
Sedalia, Missouri
Shakopee, Minnesota
Shawnee, Oklahoma
Shenandoah, Iowa
Sikeston, Missouri
Slater, Missouri
Smith Center, Kansas
Springfield, Missouri
Stuttgart, Arkansas
Texarkana, Arkansas
Topeka, Kansas

Tulsa, Oklahoma
Vinita, Oklahoma
Wagoner, Oklahoma
Warrensburg, Missouri
Washington, Missouri
Waterloo, Iowa
Wellington, Kansas
West Plains, Missouri
Whitewater, Kansas
Wichita, Kansas
Wilson, Kansas
Winfield, Kansas
Winona, Minnesota
Woodward, Oklahoma

VIII

That at each of said transit points referred to in paragraph VII are located dealers in grain and grain products, flour millers, and feed manufacturers.

That in the purchase of grain and in the sale of said grain or the products thereof, complainant's members are at all times in keen and active competition with said dealers, millers, and manufacturers located at said transit points.

That said dealers, millers, and manufacturers located at said transit points buy their grain and dispose of such grain or the products thereof in the same places and localities as complainant's members and operate in all respects in a manner comparable to complainant's members, including shipment under transit privileges duly authorized by defendants under which the through rate from the point of origin of the grain to the destination of the grain or products thereof is protected.

[fol. 547] That the differences in charges herein complained of make it impossible for complainant's members to compete with dealers, millers, and manufacturers located at said other transit points to their injury.

IX

That substantially similar circumstances and conditions of transportation are involved when transit is taken at Kansas City, Mo.-Kans., as at said other transit points.

X

That the rules and regulations referred to in paragraph V hereof are unjust and unreasonable.

XI

That every through rate on grain and its products from origins referred to herein to destinations referred to herein applicable to transportation when transit privileges are taken at Kansas City which exceeds the contemporaneously

applicable through rate for direct transportation over the same route is unjust, unreasonable, and excessive.

XII

That by reason of the facts stated in the foregoing paragraphs complainant's members are subjected to the payment of rates and charges for transportation which are unjust and unreasonable, in violation of Section 1 of the interstate commerce act, and which unduly prefer said other transit points, the dealers, millers, and manufacturers there located, and their traffic to the undue prejudice and disadvantage of Kansas City, Mo.-Kans., complainant's [fols. 548-549] members, and their traffic, in violation of Section 3 of said act.

Wherefore, complainant prays that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of said act and establish and put in force and apply in future to said transportation, in lieu of the rules, rates, and charges herein complained of, such other rules, rates, and charges as the Commission may deem reasonable and just and free from undue prejudice, and that such other and further order or orders be made as the Commission may consider proper in the premises.

The Board of Trade of Kansas City, Mo., by W. R. Scott, Transportation Commissioner, J. W. Holloway, Assistant Transportation Commissioner.

Dated at Kansas City, Mo., January 29, 1937.

Verification

STATE OF MISSOURI,
County of Jackson, ss:

H. A. Merrill, being duly sworn, deposes and says: that he is Chairman of the Transportation Committee of The Board of Trade of Kansas City, Mo., the complainant in the above-entitled proceeding; that he has read the foregoing complaint, and knows the contents thereof, and that the same are true as stated.

H. A. Merrill.

Subscribed in my presence, and sworn to before me by the affiant above named, this 29th day of January, 1937. Arthur P. Wells, Notary Public.

[fol. 550] EXHIBIT 6 TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 27580

ATKINSON MILLING COMPANY, THE BLAIR MILLING COMPANY, Capital Flour Mills, Inc., Commander-Larabee Milling Company, The Lukens Milling Company, J. C. Lysle Milling Company, Nebraska Consolidated Mills Company, Northwestern Consolidated Division of Standard Milling Company, Maney Milling Company, Omar Mills, Inc., Pillsbury Flour Mills Company, Russell-Miller Milling Company, Washburn Crosby Company, Complainants,

vs.

THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, CHICAGO AND NORTH WESTERN RAILWAY COMPANY (Charles P. Megan, Trustee), Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company (Patrick H. Joyce and Luther M. Walter, Trustees), Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, [fol. 551] Walter J. Cummings and George I. Haight, Trustees), The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), Chicago, Saint Paul, Minneapolis and Omaha Railway Company, Great Northern Railway Company, Green Bay and Western Railroad Company, Illinois Central Railroad Company, The Minneapolis & St. Louis Railroad Company (L. C. Sprague and John Junell, Co-Receivers), Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Missouri-Kansas-Texas Railroad Company, Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), Missouri Pacific Railroad Corporation in Nebraska (Guy A. Thompson, Trustee), Northern Pacific Railway Company, St. Louis-San Francisco Railway Company (J. W. Kurn and John G. Lonsdale, Trustees), Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), Defendants

COMPLAINT

The complaint of the above-named complainants respectfully represents and shows:

I

That complainants are corporations, except The Lukens Milling Company, which is a copartnership consisting of [fol. 552] Arthur and Edwin Lukens, and that complainants are engaged in the flour milling business at the following points:

At Atchison, Kansas: The Blair Milling Company, The Lukens Milling Company, Pillsbury Flour Mills Company.

At Kansas City, Missouri: Commander-Larabee Milling Company, Washburn Crosby Company.

At Leavenworth, Kansas: J. C. Lysle Milling Company.

At Minneapolis, Minnesota: Atkinson Milling Company, Commander-Larabee Milling Company, Northwestern Consolidated Division of Standard Milling Company, Pillsbury Flour Mills Company, Russell-Miller Milling Company, Washburn Crosby Company.

At Omaha, Nebraska: Maney Milling Company, Nebraska Consolidated Mills Company, Omar Mills, Inc.

At St. Joseph, Missouri: Commander-Larabee Milling Company.

At St. Paul, Minnesota: Capital Flour Mills, Inc.

II

That the defendants above named are common carriers engaged in the transportation of property wholly by railroad between the points hereinafter mentioned, and as such [fol. 553] common carriers are subject to the provisions of the Interstate Commerce Act.

III

That the points above mentioned at which complainants' mills are located are so-called rate-break points from which proportional rates are published and in effect on grain and grain products as specified in Item 55 of Western Trunk Lines Freight Tariff No. 331-A, L. E. Kipp's I. C. C. No. A-2640; that, except as hereinafter noted in paragraph VIII, the existing rules and regulations of defendants governing transit on grain and grain products prohibit transit of said commodities at rate-break points on proportional rates applying through such points, while they grant transit on such proportional rates at interior points on the same routes and on competitive routes between the same points;

and that the purpose of this complaint is to secure the same transit privileges in connection with proportional rates for complainants' mills located at rate-break points as those enjoyed by mills located at interior points, hereinafter referred to as interior mills.

IV

That in connection with their business, complainants ship grain from various points over the lines of one or more of defendants to the points at which their respective mills are located, manufacture the samei nto flour and other grain products and ship said flour and other grain prod-
[fol. 554] ucts over the lines of one or more of defendants to various destinations throughout the United States; that in the purchase of grain and the sale of the products thereof, complainants are in keen and active competition with interior mills which buy their grain and dispose of their products in the same places and localities as complainants; and that complainants are placed at a serious disadvantage in competing with interior mills by the transit situation above referred to and hereinafter more fully set forth.

V

That defendants publish and maintain in Western Trunk Lines Freight Tariff No. 332, I. C. C. A-2590, L. E. Kipp, Agent, effective July 1, 1935, numerous proportional rates on grain and grain products from proportional or rate-break points, which apply over routes through other proportional or rate-break points to various destinations, of which the following are examples:

(1) From Minneapolis, St. Paul and Duluth, Minnesota, and Superior, Wisconsin, to Chicago and Peoria, Illinois, Milwaukee, Wisconsin, and related points, 12 cents.*

(2) From Omaha, Atchison, Leavenworth, St. Joseph and Kansas City, hereinafter sometimes collectively referred to as the Missouri River points, to Chicago, Milwaukee and related points, 15 cents; and to Peoria, 13 cents.

[fol. 555] (3) From Omaha to St. Louis, Missouri, 13 cents.

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* All rates are in cents per 100 pounds.

(4) From Atchison, Leavenworth, St. Joseph and Kansas City to St. Louis, 11 cents.

(5) Between Omaha and the other Missouri River points named, 6 cents.

(6) Between Minneapolis-St. Paul and Duluth-Superior, 4½ cents.

That all of defendants are parties to said tariff; and that said tariff specifies the routes over which the above-mentioned proportional rates apply, which include routes from one of said proportional or rate-break points through another or other proportional or rate-break points, and numerous other routes, to the same destination.

VI

That the general rules and regulations governing the privilege of transit of grain and grain products, in carloads, on the lines of defendants are published in L. E. Kipp's I. C. C. No. A-2640, which provides in Item 5, paragraph (d), that

"From points from which proportional rates are published to the transit destination, no basis lower than such proportional rates will apply under transit."

That in addition to the foregoing tariff, to which all of defendants are parties, each one of defendants publishes individual tariff or tariffs specifying the transit privileges applicable on its lines; that the individual tariffs of de- [fol. 556] fendants are specifically made subject to the rules and regulations of the general transit tariff hereinabove referred to, including the rule above quoted; that these tariffs provide transit privileges generally on grain and grain products at the through rates at all points where necessary, except that on shipments stopped at points from which proportional rates are published, being the so-called rate-break points where complainants' mills are located, transit is granted only on the combination of rates to and from such points, except as hereinafter set forth in paragraph VIII; that the following is a list of the individual transit tariffs of defendants:

The Alton Railroad Company tariff No. 1700, I. C. C. No. 120.

The Atchison, Topeka and Santa Fe Railway Company circular No. 2430-A, I. C. C. No. 12510.

Chicago and Northwestern Railway Company tariff No. 17043, I. C. C. No. 10510.

Chicago, Burlington & Quincy Railroad Company tariff No. 17786-B, I. C. C. No. 18556.

Chicago Great Western Railroad Company tariff No. 28-O, I. C. C. No. 5378.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company tariff No. 17015-B, I. C. C. No. B-6669.

The Chicago, Rock Island and Pacific Railway Company tariff No. 34561-B, I. C. C. No. 12571.

Illinois Central Railroad Company tariff No. 2485-X, I. C. C. No. 10900.

The Minneapolis & St. Louis Railroad Company tariff No. 1700-B, I. C. C. No. B-842.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company tariff No. 235-E, I. C. C. No. 6630.

[fol. 557] Missouri-Kansas-Texas Railroad Company tariff No. 9018-A, I. C. C. No. 1033.

Missouri Pacific Railroad Company tariff No. 390-A, I. C. C. No. A-8768.

Northern Pacific Railway Company tariff No. 4119-G, I. C. C. No. 9336.

St. Louis-San Francisco Railway Company tariff No. 5722, I. C. C. No. 10048.

Wabash Railway Company tariff No. B-18214, I. C. C. No. 6946.

Western Trunk Lines Freight tariff No. 331-A, L. E. Kipp, Agent, I. C. C. No. A-2640.

That the items, rules and regulations contained in said tariffs which prohibit transit of grain and grain products on proportional rates at rate-break points while granting the same at interior points are so numerous and variable that it is impractical to set them forth in this complaint, but said tariffs and the applicable provisions thereof are hereby referred to and made a part thereof, and reference is also hereby made to any other tariffs of defendants that may have been overlooked which have the same effect.

VII

That the effect of the rule quoted in the previous paragraph and of the provisions of the individual tariffs of

defendants is to prohibit transit at rate-break points on grain and grain products on the proportional rates applying from one proportional or rate-break point through another proportional or rate-break point, and compels mills located at an intermediate rate-break point to pay the ap-
[fol. 558] plicable inbound rate plus the proportional rate from the rate-break point, while a mill located at an interior point on the same route from which no proportional rate is published is permitted to transit on the through proportional rate, paying the applicable tariff rate into the transit point and the balance of the through rate out; that numerous illustrations of such situations could be given, but the following are typical:

(1) The proportional rate of 15 cents from Kansas City to Chicago applies through Omaha via the Missouri Pacific to Omaha and the C. & N. W. to Chicago. Mills located on this route at Fall City and Nebraska City, Neb., and at Cedar Rapids, Iowa, are granted transit on this rate, while the mills at Omaha, Leavenworth and Atchison must pay the higher combination rate based on the rate from Kansas City to the transit station plus 15 cents from the transit point to Chicago for the same transportation and transit service. (Sup. 10 to Missouri Pacific tariff, I. C. C. No. A-8768, and Item 400 of C. & N. W. tariff, I. C. C. No. 10510.)

(2) The proportional rate of 15 cents applies from Omaha through Atchison, Leavenworth and Kansas City to Chicago via the Missouri Pacific to Kansas City thence the Wabash to Chicago. The intermediate rate-break points named are denied transit on this rate and must pay the higher combination rate of 6 cents Omaha to transit station plus 15 cents from transit station to Chicago, while mills at Fall City and Nebraska City, Nebraska, Moberly and Salisbury, Missouri, and Quincy and Springfield, Illinois, are granted transit on the through rate of 15 cents. [fol. 559] (The same Missouri Pacific reference, Item 40-B, and Wabash tariff, I. C. C. No. 6946.)

(3) The 13 cent proportional rate from Omaha to St. Louis applies via the Missouri Pacific direct also via Lincoln and other points in Nebraska involving substantial out-of-line hauls. Transit is permitted on this rate at numerous intermediate points, and also at points not directly

intermediate, including Lincoln and Crete, Neb., Independence, Higginsville, Booneville, Pleasant Hill, Concordia, Sedalia and Washington, Missouri, but is denied to mills located at rate-break points on the same route, namely, Atchison, Leavenworth and Kansas City, which, in order to transit, must pay the higher combination rate based on the rate from Omaha to the transit station plus 11 cents from the transit station to St. Louis. (Missouri Pacific tariff, I. C. C. No. A-8768.)

That at least one mill is located at each one of the interior points mentioned in the foregoing illustrations and the mills of complainants are in active competition with mills located at such interior points in the sale of their products, as well as in the purchase of the grain; and that the transportation is over the same route and the transit service granted at rate-break points is similar to the transit service granted at interior milling points.

VIII

That by recent amendments to the transit tariffs of the interested defendants, shipments of wheat from Duluth and Superior, and from Itasca, Wis., may now be stopped [fol. 560] in transit at Minneapolis and St. Paul and the products thereof shipped to Milwaukee and Chicago and related gateways on the 12 cent proportional rate applying from these points, but transit is not permitted on said rate on grain and grain products generally as specified in Item 55 of L. E. Kipp's I. C. C. No. A-2640, in that the products may not be shipped to destinations intermediate to Milwaukee, Chicago and related gateways, such as Madison and Portage, Wisconsin, whereas interior mills located on the same routes and receiving similar transit and transportation service are permitted to transit grain and grain products generally and to ship the same to intermediate destinations; that this situation may be illustrated by reference to the tariff of defendant Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Sup. 20, Item 1490, I. C. C. No. B-6669, effective August 1, 1936), as follows:

(1) Grain and grain products from Duluth moving on the proportional rate of 12 cents may be stopped for transit at Cannon Falls, Faribault, Hastings, Lake City, Mankato, Montgomery, Red Wing, Wabasha and Winona, Minnesota,

all milling points, and the products thereof shipped to such points as Beloit, Burlington, Janesville, Madison, Portage, Racine, Watertown and Waukesha, Wisconsin. Such shipments must pass through Minneapolis and St. Paul, but mills located thereat are not allowed transit on grain and grain products to the destinations mentioned, but are required to pay on such shipments the higher combination rate of 4½ cents Duluth to Minneapolis plus 12 cents Minneapolis to destination.

[fol. 561] IX

That transit at interior points on routes through rate-break points is not permitted by the tariffs of defendants unless the same through rate is also in effect via another route from point of origin to transit destination and transit privileges are authorized in connection therewith; that there are numerous such alternate routes on which transit privileges are authorized, and the mills located on such routes are permitted to transit on the basis of the proportional rates, whereas complainants' mills located at rate-break points are denied the privilege of doing so; that many of the alternate routes are substantially longer than the routes through rate-break points from the point of origin to the same transit destination, and the mills located thereon receive greater transportation service than that rendered complainants, who are required to pay the higher combinations via the transit point; that the competitive situation as between complainants and the mills located on other or alternate routes is the same as that above set forth with interior mills located on the rate-break routes; and that this entire situation, under which mills not located at rate-break points are permitted to transit at the through rates, while complainants' mills located at such points are required to pay the higher combination of rates to and from the transit point, results in serious injury and detriment to complainants.

[fol. 562] X

That the combination of rates on the rate-break points which complainants are required to pay when grain and grain products are stopped for transit are inherently unjust and unreasonable, and relatively so when compared

with the through rates paid by interior mills for like transportation and transit service, in violation of Section 1 of the Act.

XI

That the transportation and transit service rendered by defendants on shipments stopped for transit at rate-break points and at interior points on the same route is performed under substantially similar circumstances and conditions, and that defendants' transit rules and regulations above mentioned which result in the collection of higher charges from complainants, and the said higher charges themselves, constitute unjust and unlawful discrimination against complainants, in violation of Section 2 of the Act.

XII

That the denial of transit on grain and grain products to mills located at rate-break points under the same rules, regulations and charges and on the same conditions as transit is granted to interior mills located on the same routes through the rate-break points and on other routes from the same points of origin to the same destinations [fol. 563] subjects complainants and their traffic to undue and unreasonable prejudice and disadvantage, and gives to their competitors located at interior points an undue and unreasonable preference and advantage, in violation of Section 3 of the Act.

Wherefore, complainants pray that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to cease and desist from the aforesaid violations of said Act, and establish and put in force and apply in the future to the transportation of grain and grain products subject to proportional rates referred to in paragraph V hereof, in lieu of the rules and regulations referred to in paragraphs VI and IX hereof, providing for transit on said commodities and of the combination of rates made applicable thereby when shipments are stopped for transit at rate-break points, such other transit rules, regulations and rates as the Commission may deem reasonable and just, and free from unjust discrimination and undue prejudice, and that such other and further order

or orders be made as the Commission may consider proper in the premises.

Washburn Crosby Company, by Walter H. Mills, Vice President. C. J. Flynn, Traffic Manager. Atkinson Milling Company, O. I. Romfo, Traffic Manager. Capital Flour Mills, Inc., Paul M. Peterson, Traffic Manager. Commander-Larabee Mill-[fol. 564] ing Company, C. C. Pardee, Traffic Manager. Northwestern Consolidated Division of Standard Milling Company, L. D. Veltum, Traffic Manager. Russell-Miller Milling Company, Wm. E. Johnson, Traffic Manager. Pillsbury Flour Mills Company, H. F. Young, Traffic Manager. Maney Milling Company, A. S. Diwoky, Traffic Manager. Nebraska Consolidated Mills Company, Warren H. Ritchie, Traffic Manager. Omar Mills, Inc., R. E. Stover, Traffic Manager. The Blair Milling Company, H. A. Marteny, Secretary and Traffic Manager. The Lukens Milling Company, Claud Van Dyke, Traffic Manager. J. C. Lysle Milling Company, H. A. Thompson, Traffic Manager.

Minneapolis, Minnesota, October 26, 1936.

S. J. Wettrick, Attorney for Complainants, One La-Salle Street Building, Chicago, Illinois.

[fols. 565-566] STATE OF MINNESOTA,
County of Hennepin, ss.:

Walter H. Mills, being first duly sworn, deposes and says: That he is vice-president of the Washburn Crosby Company, one of the complainants in the above-entitled proceeding; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

Walter H. Mills.

Subscribed in my presence, and sworn to before me by affiant above named, this 26th day of October, 1936. P. L. Bachman, Notary Public in and for the County of Hennepin, State of Minnesota. My commission expires August 4, 1938. (Notarial Seal.)

[fol. 567] EXHIBIT 7 TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

OMAHA GRAIN EXCHANGE OF OMAHA, NEBRASKA, Complainant,

v.

THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Camas Prairie Railroad Company, Chicago and North Western Railway Company (Charles P. Megan, Trustee), Chicago, St. Paul, Minneapolis and Omaha Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company (Patrick H. Joyce and Luther M. Walter, Trustees), Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), The Chicago, Rock Island and Gulf Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), The Colorado and Southern Railway Company, The Denver and Rio Grande Western Railroad Company, Great Northern Railway Company, Gulf, Colorado and Santa Fe Railway Company, International-Great Northern Railroad Company (Guy A. Thompson, Trustee), Illinois Central Railroad Company, The Kansas City Southern Railway Company, Kansas, Oklahoma & Gulf Railway Company, Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), Missouri Pacific Railroad Corporation in Nebraska (Guy A. Thompson, Trustee), Northern Pacific Railway Company, Northwestern Pacific Railroad Company, Panhandle and Santa Fe Railway Company, San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee), The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee), St. Louis-San Francisco and Texas Railway Company, St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, Trustees), St. Louis Southwestern Railway Company of Texas, Southern Pacific Company (Pacific Lines), Spokane, Coeur D'Alene & Palouse Railway Company, Spokane, Port-

land and Seattle Railway Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, The Texas Mexican Railway Company, Union Pacific Railroad Company, The Western Pacific Railroad Company, Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), Defendants, Complaint No. 27628—Sub. 1

Omaha, Nebraska.

[fol. 568] The complaint of the above named complainant respectfully shows:

That the Omaha Grain Exchange is a non-profit corporation, organized and existing under the laws of the State of Nebraska, with its principal place of business in Omaha, Nebraska, and as such now maintains, and for many years past has maintained a market at the terminals comprising the points on defendants lines of railroad designated in the tariffs hereinafter mentioned as Omaha, Nebraska, South Omaha, Nebraska and Council Bluffs, Iowa, for the buying, selling, inspection and weighing of grain, with rules and regulations relating to and governing said transactions, and the storage, cleaning, drying and other handling of grain by its members; that said Omaha Grain Exchange is composed of members extensively engaged at said terminals in buying, selling, receiving, storing, handling and shipping of grain, and in the manufacture, sale and reshipping of grain products, and complains herein for itself and in behalf of said members.

II

That the defendants above named are common carriers, engaged in the transportation of property wholly by railroad between the points hereinafter mentioned, and as much common carriers are subject to the provisions of the Interstate Commerce Act.

III

That Omaha-South Omaha, Nebraska-Council Bluffs, Iowa, is a large terminal grain market annually receiving and shipping large quantities of grain and the products of grain. That complainants members operate in said terminal, known as the Omaha market, numerous plants for the storage, cleaning, drying, processing and other handling [fol. 569] of grain, such as elevators, flour, corn and feed

mills and other plants for the conversion of grain into products.

IV

That in the conduct of their business complainants members receive grain in carloads from various points over the defendants lines of railroad to Omaha-South Omaha, Nebraska, Council Bluffs, Iowa, where it is unloaded into the industries referred to in paragraph III, and subsequently ship said grain or the products thereof, in carloads over defendants lines to various destinations throughout the United States, and for export. That said grain and products are reshipped under the provisions of the defendants applicable transit tariffs which permit the stopping of grain in transit for the purpose of storing, cleaning, drying, milling, handling, manufacturing, etcetera, as follows:

Chicago and North Western Railway Company tariff I. C. C. No. 10510.

Chicago, Burlington & Quincy Railroad Company tariff I. C. C. No. 18532.

Chicago Great Western Railroad Company tariff I. C. C. No. 5378.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company tariff I. C. C. No. B-6813.

The Chicago, Rock Island and Pacific Railroad Company tariffs I. C. C. Nos. C-12611 and C-12619.

Illinois Central Railroad Company tariff I. C. C. No. 10900.

Missouri Pacific Railroad Company tariff I. C. C. No. A-8768.

Union Pacific Railroad Company tariff I. C. C. No. 4335.

Western Trunk Lines tariff, L. E. Kipps I. C. C. No. A-2739, J. R. Peel's I. C. C. No. 2853.

Wabash Railway Company tariff I. C. C. No. 6990.

[fol. 570] That defendants publish and maintain so-called proportional rates for the transportation of grain or the products thereof in carloads from Omaha-South Omaha, and Council Bluffs to points in the states of Iowa, Missouri, Illinois, Indiana, Minnesota, South Dakota, Wisconsin, Kansas, Kentucky, Nebraska, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Michigan, Ohio and Mississippi and to points beyond basing thereon:

That defendants tariffs provide that when grain or the

products thereof are reshipped from Omaha-So. Omaha or Co. Bluffs to said destinations, the said proportional rates are the exclusive basis of charge for the transportation from Omaha-South Omaha and Council Bluffs to said points. Such provision is contained in all the tariffs enumerated in paragraph IV hereof, but the following are typical:

1. "From points from which proportional rates are published to the transit destination, no basis lower than such proportional rates will apply under transit". (Paragraph (d) of Item 5 on page 10 of L. E. Kipp's tariff I. C. C. No. A-2739).

2. "On all shipments stopped for transit at a rate break point, the combination of rates to and from such rate break point will apply". (Item 305 on page 9 of the Chicago, Rock Island and Pacific Railway Company tariff I. C. C. No. C-12619).

That the effect of said provisions is to require complainants members using transit privileges to pay the full combination of rates to and from Omaha, South Omaha and Council Bluffs which are rate break points regardless of any lower rate applicable over the same route.

VI

That in numerous instances through rates are main- [fol. 571] tained from origins referred to in paragraph IV to destinations referred to in paragraph V by way of Omaha, South Omaha and Council Bluffs which are less than the corresponding and contemporaneously applicable combination of rates to Omaha, South Omaha-Council Bluffs and proportional rates therefrom. Examples of such rates are the following:

1. The rate on grain from Harvard, Nebraska to Kansas City, Mo. is 16½ cents per 100 pounds (C. & N. W. Ry. I. C. C. No. 10551), while the combination of local rate, 14½ cents from Harvard to Omaha (C. & N. W. Ry. I. C. C. No. 10507), and proportional rate from Omaha to Kansas City 6 cents (L. E. Kipp's I. C. C. No. A-2743), is 20½ cents.

2. The proportional rate on grain from Kansas City, Missouri to Chicago, Illinois, via Omaha is 15 cents per 100 pounds, while the combination of proportional rates, 6 cents from Kansas City to Omaha and proportional rate from

Omaha to Chicago, 15 cents, is 21 cents (L. E. Kipp's I. C. C. No. A-2743).

That the foregoing are illustrations only, and this complaint is directed to these and every similar situation where the combination of rates to and from Omaha-South Omaha and Council Bluffs exceed the applicable through rate over the same route.

VII

That in every such instance as alleged in paragraph VI defendants by their tariffs permit grain to be transported from origin to various transit points on the same route and said grain or its products to be reshipped therefrom under transit privileges to destinations on the basis of the [fol. 572] lowest through rate, notwithstanding said rate is less than the corresponding combination of the rate to Omaha, South Omaha and Council Bluffs, and the proportional rate therefrom, which is the exclusive basis for similar transit privileges at Omaha-South Omaha and Council Bluffs.

That in such instances defendants tariffs also authorize transit privileges at intermediate points on routes other than via Omaha on the basis of the same through rate for direct transportation as in effect via Omaha for direct through transportation.

That transit privileges as aforesaid at points other than Omaha, South Omaha and Council Bluffs are authorized by the tariffs enumerated in paragraph IV hereof and also the following tariffs:

Chicago, Burlington & Quincy Railroad Company tariff I. C. C. No. 18532.

Chicago and North Western Railway Company tariff I. C. C. No. 10510.

That representative of said transit points are the following localities:

Cedar Rapids, Iowa
Davenport, Iowa
Des Moines, Iowa
Falls City, Nebraska
Fremont, Nebraska
Holdrege, Nebraska
Lincoln, Nebraska
Missouri Valley, Iowa
Mason City, Iowa
Nebraska City, Nebraska
Waterloo, Iowa

VIII

That each of said transit points referred to in paragraph VII are located dealers in grain and grain products and flour millers and feed manufacturers.

[fol. 573] That in the purchase and sale of grain and the products thereof, complainants members are at all times in keen and active competition with said dealers, millers and manufacturers located at said transit points.

That said dealers, millers, manufacturers located at said transit points buy their grain and dispose of such grain or the products thereof in the same places and localities as complainants members, and operate in all respects in a manner comparable to complainants members, including shipment under transit privileges duly authorized by defendants under which the through rate from the point of origin of the grain to the destination of the grain or products thereof is protected.

That the differences in charges herein complained of make it impossible for complainants members to compete with dealers, millers, and manufacturers located at said other transit points to their injury.

IX

That substantially similar circumstances and conditions of transportation are involved when transit is taken at Omaha-South Omaha, Nebraska and Council Bluffs, Iowa as at said other transit points.

X

That the rules and regulations referred to in paragraph V hereof are unjust and unreasonable.

XI

That every through rate on grain and its products from origins referred to herein to destinations referred to herein [fol. 574] applicable to transportation when transit privileges are taken at Omaha, South Omaha-Council Bluffs which exceeds the contemporaneously applicable through rate for direct transportation over the same route is unjust, unreasonable, and excessive.

XII

That by reason of the facts stated in the foregoing paragraphs complainants members are subjected to the payment

of rates and charges for transportation which are unjust and unreasonable, in violation of section 1 of the interstate commerce act, and which unduly prefer said other transit points, the dealers, millers, and manufacturers there located, and their traffic to the undue prejudice and disadvantage of Omaha, South Omaha, Nebraska-Council Bluffs, Iowa complainants members, and their traffic, in violation of section 3 of said act.

XIII

That the market referred to in paragraph 1 hereof has been maintained and operated by complainant and its members for more than thirty two years; that continuously throughout said entire period up to July 1, 1935, (except for the brief period August 1, 1931—February 19, 1932), the defendant railroads entering said market maintained through rates and combination rates such as are referred to in paragraph VI hereof, and, as a part thereof, under the applicable tariffs, transit privileges were granted at said market upon all of said rates. That thereby said market and terminal became, during said period, one of the largest primary competitive grain markets in the United [fol. 575] States, and at times the largest competitive market for said grains in the United States and increased the grain handled at and through said market and terminal from an insignificant amount prior to 1904 to a maximum amount in 1918 of 91,463,800 bushels, and to an average annual amount for the thirty two (32) year period from 1904 to 1935, inclusive, of 56,032,384 bushels. That said rates and transit privileges during said period attracted large quantities of grain to said market for sale, milling and processing purposes, and for storage, drying, cleaning and other handling in, and transfer through, elevators located at said market, and made said market a potent competitive market for grain, and an important industrial center for the milling, processing, storage and handling of grain and grain products, which were sold at said market for distribution throughout the United States and in many foreign countries.

That as a direct result of the condition of affairs created by said rates and transit privileges throughout said period, numerous persons were induced to and did extensively engage in the business of the buying and selling of grain for themselves and others, and of the storing, milling, process-

ing and other handling of grain; that extensive and valuable investments were induced to be made, and were made, at said market by this complainant in a large grain exchange building and in other facilities, in an amount in excess of $600,000.00, to provide office accommodations for its [fol. 576] employees and members, and the means to promote the expeditious and economical trading in and handling of grain, and by complainants members and certain of the defendants railroads in elevators and flour, corn and feed mills, whereby during said period the grain elevators were increased in number from three (3) to eighteen (18), and the grain elevator capacity from 2,140,000 bushels to 26,710,000 bushels, the flour milling capacity from nothing to 5,000 barrels daily, the corn milling capacity from nothing to 1,800 barrels daily, and the feed milling capacity from nothing to 1,200 tons daily; that for many years prior to July 1st, 1935, said business and industries gave continuous employment to an average of more than 1,500 persons.

That the typical tariffs respecting transit, referred to in paragraph V hereof, became effective for the first time (except for the brief period heretofore referred to in this paragraph) on July 1st, 1935, and have diverted and will continue to divert so long as said tariffs shall remain in effect, large and substantial quantities of grain, that theretofore moved into and through said market, from said market and into and through other markets highly competitive with said Omaha market, and thereby eliminate Omaha as a market for many millions of bushels of grain; that they have substantially and materially damaged and will continue to substantially and materially damage the business and investments above described; that they have reduced and will continue to reduce the employment in said businesses and industries, and tend to lower the price [fol. 577] of grain to the producer and grower in the extensive grain producing territory tributary to said market.

Wherefore, complaint prays that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to cease from the aforesaid violations of the aforesaid sections of the Interstate Commerce Act, and suspending and cancelling paragraph (d) of Item 5, on page 10 of L. E. Kipp's tariff, I. C. C. Number

A-2739, and Item 305 on page 9 of the Chicago, Rock Island & Pacific Railway Company tariff, I. C. C. Number C-12619, and all like provisions in the tariffs referred to in paragraph IV of this complaint, and that such other and further order or orders be made as the Commission may consider proper in the premises to require defendants to grant and allow transit at Omaha and South Omaha, Nebraska, and Council Bluffs, Iowa, upon all grain and grain products moving through and out of said points on proportional rates and through rates.

Omaha Grain Exchange, By John A. Kuhn, Traffic Manager.

Alfred G. Ellick, Of Counsel, 810 Insurance Bldg., Omaha, Nebraska.

Dated at Omaha, Nebraska, February 9, 1937.

[fol. 578] VERIFICATION.

STATE OF NEBRASKA,
County of Douglas, ss:

Arthur McKinley, being duly sworn, deposes and says: That he is Chairman of the Transportation Committee of the Omaha Grain Exchange of Omaha, Nebraska, the complainant in the above-entitled proceeding; that he has read the foregoing complaint, and knows the contents thereof, and that the same are true as stated.

Arthur McKinley.

Subscribed in my presence, and sworn to before me by the affiant above named, this 9th day of February, 1937.

C. L. Hilmes, Notary Public.

[fol. 579] EXHIBIT 8 TO COMPLAINT.

Interstate Commerce Commission, Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and order of the Commission, filed and entered July 27, 1937, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases listed in the footnote on the first page of said report, the

original of which is now on file and of record in the office of this Commission.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Commission this 11th day of December, A. D. 1939.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 580] Served August 2, 1937

INTERSTATE COMMERCE COMMISSION

Grain Case Modifications

No. 17000

Rate Structure Investigation, Part 7

GRAIN AND GRAIN PRODUCTS WITHIN THE WESTERN DISTRICT AND FOR EXPORT

No. 27580 [1]

ATKINSON MILLING COMPANY ET AL.

vs.

ALTON RAILROAD COMPANY ET AL.

Submitted June 11, 1937. Decided July 27, 1937

1. Finding in Grain and Grain Products, 164 I. C. C. 619, 173 I. C. C. 511, 205 I. C. C. 391, and 215 I. C. C. 83, requiring observance of rate-break combinations and of proportional rates therein prescribed as the exclusive basis of charge on shipments of grain and grain products transited at points from which proportional rates are applicable, modified to permit transit at such points until December 1, 1938, on all rates, overhead or proportional, which now apply through or via said proportional rate points.

2. Petition of carriers in the western district in Grain and Grain Products, supra, for permission to grant three

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[1] This report also embraces No. 27628, Board of Trade of Kansas City, Mo. v. Alton Railroad Company et al., and No. 27628 (Sub-No. 1), Omaha Grain Exchange et al. v. Same.

free stops in transit in connection with rates prescribed therein, in lieu of two as there limited, granted.

3. Petition in same proceeding of carriers serving Minneapolis, Minn., to establish proportional rates on wheat from the Missouri River crossings, Sioux City, Iowa, to Kansas City, inclusive, with transit at Minneapolis and reshipment of the milled product to Chicago, Ill., and related gateways, on traffic destined east of the Illinois-Indiana State line, on a basis 4 cents lower than present combinations of proportionals, granted. Findings in Wheat Products from Twin Cities to Chicago, 218 I. C. C. 27, modified.

4. Outstanding orders in Grain and Grain Products, supra, modified to conform to findings herein.

S. J. Wettrick, W. R. Scott, J. W. Holloway, Alfred G. Ellick, John A. Kuhn, A. T. Sindel, J. B. McGinnis, W. H. Fitzpatrick, and N. K. Thomas for complainants.

A. J. Leber, C. F. Real, John L. Bowlus, F. S. Keiser, Frank B. Townsend, C. C. Bovey, Walter H. Mills, D. L. [fol. 581] Kelley, Freeman Bradford, Herman L. Bode, W. T. Macauley, J. A. Little, E. E. Kohlwes, Wm. T. McArthur, C. B. Bee, H. D. Driscoll, J. J. Schmicher, J. S. Brown, Herbert J. Campbell, Harry W. Oehler, Harrison A. Bronson, T. A. Durrant, Morris Erickson, C. H. Conaway, Ben C. Larkin, Elmer W. Cart, S. S. McDonald, J. C. Winter, Ed. P. Byars, D. M. McCracken, Ralph W. Currie, Frank A. Leffingwell, R. S. Orr, B. A. Springrose, C. A. Ross, L. J. Becquet, E. R. Savage, Ray Trump, W. C. Nichols, John L. Hogan, I. C. Peterson, E. H. Hogueland, T. M. Herndon, Chas. W. Steiger, J. F. Stevick, E. H. Tipton, D. R. Simpson, K. K. Smith, J. G. Bruce, J. W. Irvine, C. T. Vandenover, W. J. Harper, Paul T. Jackson, Martin F. Smith, F. H. Nesmith, F. Gordon Willis, E. P. Costello, W. V Wheat, and E. H. Thornton for various interveners.

R. S. Outlaw, H. C. Barron, B. F. E. Marsh, Eldon M. Martin, G. A. Hoffelder, E. J. Hyett, A. B. Enoch, E. A. Tharp, T. L. Hirshman, C. S. Burg, C. G. Rausch, B. F. Batts, A. Keupfert, Toll R. Ware, W. E. Davis, L. V. Beatty, M. G. Roberts, C. H. Rombach, H. V. Cook, L. W. Cole, L. H. Strasser, Lawrence Chaffee, R. I. Mills, G. L. Eastman, R. J. Hagman, T. J. Slattery, R. C. Sanders, Carson L. Taylor, J. E. Flansburg, H. A. Mintz, C. B. Kerr,

Warren Newcome, Richard Musenbrock, R. G. Hawkinson, E. F. Rice, A. R. Hayward, and P. A. Walsh for defendants.

Report of the Commission

By the Commission:

The complaint cases are related and will be disposed of in one report. They are brought by the grain and milling interests at the Missouri River, St. Louis, Mo., Memphis, Tenn., Minneapolis and St. Paul, Minn., and Duluth, Minn. Numerous interested parties intervened both in support of and in opposition to the relief sought and some of them offered testimony to support their views. While differing slightly as to scope, the complaints have a common purpose, namely each requests a modification of that portion of our findings and orders in Grain and Grain Products, 164 I. C. C. 619, 173 I. C. C. 511, 205 I. C. C. 301, and 215 I. C. C. 83, which requires the exclusive use of proportional rates from points from which such rates are applicable, as the outbound basis of charge on shipments transited at such points. Complainants in no. 27580 seek transit on intermarket proportionals only, whereas complainants in no. 27628 and sub-no. 1 thereto seek transit on all rates applying via their markets, both intermarket proportionals and overhead through rates. The two petitions referred to in the head notes were filed in Grain and Grain Products, supra. Both were submitted without a hearing and were argued with the complaint cases. Rates are stated herein [fol. 582] in cents per 100 pounds and are those in effect at the time of the hearing.

It should be recalled that the original decision was rendered July 1, 1930, Grain and Grain Products, 164 I. C. C. 619, and a supplemental report on further consideration, April 13, 1931, 173 I. C. C. 511. This will be referred to as the first Grain Case. The rates therein prescribed were set aside by the Supreme Court of the United States in Atchison, T. & S. F. Ry. Co. v. United States, 284 U. S. 248. Pursuant to this decision of the Supreme Court, further hearings were held, briefs filed, and arguments had, and a decision rendered on this further hearing October 22, 1934, Grain and Grain Products, 205 I. C. C. 301, and a supplemental report on further consideration of the record on further hearing was adopted March 4, 1936, 215 I. C. C. 83. This latter proceeding will be referred to as the second

Grain case. In both the first and second cases we prescribed a system of gathering, proportional, and overhead rates in the territory concerned, with the restrictive provision that on shipments stopped in transit at points from which proportional rates were applicable, such proportional rates must be the exclusive basis of charge on outbound shipments from said proportional rate points. The reasons for this were stated in the second Grain case, 205 I. C. C. 301, page 334, as follows:

The main reasons for the requirement of the exclusive application of the rate-break combinations were that transit balances less than the proportional rates out of the rate-break markets tended to disrupt the rate-break combinations, disorganize the general rate structure, make uncertain in advance the outbound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates, depress the price of grain at the rate-break markets, and, by direct reflection, at the country points, and reduce the revenues of the carriers.

A rate-break system of rates, such as we prescribed in both the Grain cases, to supersede the previously existing dual system under which especially the large terminal markets had at their command, for application on outbound shipments, both proportional rates as well as a multitude of varying transit balances lower than their proportionals, had practically the unanimous support of all the parties in the proceedings, although accuracy requires the further statement that certain of the representatives of terminal markets, both in evidence and in oral argument, suggested that some transit with the application of outbound balances less than their proportionals might become necessary to equalize them with their competitors and should be provided for. Just how a limited or a restricted system of transit balances should be provided for, whether by general order comprehending all locations and all shipments or by special order dealing with particular localities and particular classes [fol. 583] of shipments, was not discussed in detail, and neither suggestion was reduced to terms of definiteness and workability by any of its advocates. On this record we are asked to permit transit at proportional rate points wherever any rate, proportional or overhead, now applies or is hereafter established via such points. No one is asking for the restoration of varying balances in unlimited volume.

Generally speaking and as already indicated, in both the first and second Grain cases, no one made serious objection to a system of rate breaks at market points and overhead rates with transit at local points, provided that in so doing the through rates were not thereby unduly inflated. On the contrary, nearly everybody supported it, especially the markets. See 164 I. C. C. 619, pages 639 and 640. Many shippers had available a large volume of old billing which they could utilize on shipments after the new rates prescribed in the first Grain case had gone into effect. Experiences with operation under the rates prescribed in that case, covering a period of about seven months, therefore do not appear to have been sufficiently impressive and decisive to have attracted special attention during the hearings which attended the second case, with respect to features now made prominent in the instant proceedings. To be sure, there was much shifting of ground on the part of witnesses who testified in both the first and the second cases, but nothing of sufficient definiteness and force was advanced to indicate what, in the judgment of the same witnesses in the two complaint cases herein, is said to have produced in some respects an acute situation which, it is claimed, interferes with the most advantageous conduct of commerce in grain. In other words, the most experienced and the most competent men in this business could not foresee all the consequences in a business way that might follow from the system of rates the establishment of which they had been advocating. No one deserves to be criticized or censured on this account. There can be no question about the good faith of the parties in urging their respective views and in bringing to our attention facts in support thereof. Subsequent experience now seems to indicate that in some respect the evidence of the advocates of the rigid rate-break system was not entirely sound, and to this extent our conclusion based upon that evidence, which resulted in the prescription of the exclusive rate-break system, may not have been entirely sound. The future will determine that. We are asked now to permit departures therefrom and also to authorize one additional free transit stop.

Perhaps the most important departure requested is that in connection with the proportionals from both Kansas City, and Omaha, Neb., to St. Louis, and to Chicago and Peoria, Ill. For example, the proportional to Chicago is now

[Vol. 584] 15 cents from both Kansas City and Omaha, and between Kansas City and Omaha it is 6 cents. Under the absolute rate-break rule now in effect, each of these markets must pay 21 (15+6) cents, when drawing grain from the other for transit and reshipment to Chicago. The 15-cent rate from Omaha applies through Kansas City and the 15-cent rate from Kansas City applies through Omaha, and transit is permitted on each of these rates at every interior transit point on either side of Omaha or Kansas City, on routes through those points, but is denied to the latter two points. This is said to have imposed an undue and unlawful hardship and burden upon the milling industries of Kansas City and Omaha in selling flour in competition with interior mills using the lower rates over the same routes. It is stated that at times Kansas City mills must go to Omaha to secure certain types of wheat for blending purposes in making family flours, and that conversely Omaha mills must go to Kansas City to secure wheat for blending with Nebraska wheat for their bakery flours. Much the same difficulty is said to confront the grain dealers at each of these markets in respect of their merchandising of grain. Formerly dealers at each market drew large quantities of grain from the other when price conditions were such that this could be done at a profit. With the advent of the absolute rate-break rule this business is said by complainants to have been largely abandoned and to be now going to interior points to the disadvantage of the markets. This is said to be especially burdensome in years of short crops. Our attention is called to the fact that for 25 years or more prior to our order in the first Grain case, the requested transit had been in effect without complaint from anyone.

The interior interests oppose the relief sought unless we restore to them the adjustments which they claim they lost as a result of the Grain cases. We are not impressed by this contention, particularly since the relief sought will not change a single rate now in effect, but will merely permit the terminal markets to transit on an equality with interior transit operators on the same rates over the same routes.

Another important exception to the absolute rate-break rule is sought in connection with transit at Minneapolis on flour reshipped to Chicago for points east of the Illinois-Indiana State line, when milled from wheat drawn from

or through the Missouri River crossings (Sioux City south to Kansas City, inclusive). For 25 years or more prior to the grain cases Minneapolis was able to draw wheat from or through Kansas City, Omaha, and Sioux City and reship the milled product to Chicago, for beyond, at an arbitrary of 8 cents over the inbound rates to Minneapolis. The rate from Kansas City to Minneapolis was at that time the same as the rate from Kansas City to Chicago, and from [fol. 585] Omaha and Sioux City the rates to Minneapolis were 1 cent less than those from Kansas City. This made the rate through Minneapolis 8 cents on Kansas City grain and 7 cents on Omaha and Sioux City grain higher than that paid by direct shippers. The differences via Minneapolis over the direct rates are now 14.5 cents from Kansas City, 8.5 cents from Omaha, and 5.5 cents from Sioux City. Both the milling industry at Minneapolis and the carriers serving that city contend that a 4-cent reduction in the present rates via Minneapolis is absolutely necessary to maintain the milling industry at that point. Practically the same proposal was found not justified in Wheat Products from Twin Cities to Chicago, 218 I. C. C. 27, for the reasons there stated. There, as here, Minneapolis pointed out that the transit requested by it is now in effect at every interior mill in Minnesota south of Minneapolis, some of which are just outside the Minneapolis switching district; that these mills were formerly on the same basis as Minneapolis; that they now have a decided advantage over Minneapolis as a result of this transit; and that no one has ever complained of the transit at these southern Minnesota mills and therefore should not now object to placing Minneapolis on the same basis. In view of our conclusions herein as to the absolute rate-break rule, our findings in the case referred to must be modified.

Considerable testimony was also introduced to show the disadvantages under which the terminal markets operate in drawing Pacific coast wheat in competition with the interior. Because of crop conditions, large quantities of wheat moved to eastern markets from Oregon and Washington in 1936. The transcontinental blanket rate on wheat from Oregon and Washington is 55 cents to all of Kansas, most of Nebraska, the Missouri River, and Minneapolis and Duluth, Minn. To Minneapolis the proportionals are 17.5 cents from Kansas City and 11.5 cents from Omaha, and to Duluth they are 22 and 16 cents respectively. If Kansas

City dealers transit wheat from Oregon or Washington for reshipment to Minneapolis, they must pay the combination on Kansas City of 72.5 cents, and Omaha must pay 66.5 cents, compared with 55 cents when handled through interior transit points over the same routes. To Duluth the combinations are 4.5 cents higher than those to Minneapolis. Considerable wheat moved to Minneapolis on a free balance from interior transit points in Kansas on Pacific coast billing in 1936. The record strongly indicates that this was high-protein wheat from Kansas which had been substituted for Pacific coast wheat to the detriment of shippers of Kansas wheat from the terminal markets. Continuation of this transit is not asked by the Kansas interests. At least some of those interests ask that it be canceled. This transit [fol. 586] should be restricted. Excessively large terminal groups and unrestricted routing seem to encourage such practices and result in wasteful transportation.

Many rate situations are set forth in the record in great detail by the terminal markets to show the alleged impracticability of observing the absolute rate-break rule. In some of the situations presented the shortest routes are through the rate-break points but the combinations on such points are higher than the overhead through rates via the markets, the latter rates being used by transit operators on either side of the markets. In 1936 there was a heavy demand in Texas and Oklahoma for Illinois corn. No one-factor through rates are in effect, and the lowest combinations make on St. Louis. To most of Texas and southern Oklahoma, the proportionals are the same from Kansas City and St. Louis, and from St. Louis the proportional to Kansas City is 14 cents. The rate-break combinations on Kansas City are therefore 14 cents higher than those on St. Louis. To some of the destination territory the short routes are through Kansas City and the proportionals from St. Louis apply over such routes. This permitted St. Louis and every transit operator on either side of Kansas City to move Illinois corn through Kansas City at rates 14 cents lower than those available to Kansas City over the same routes.

The interior transit operators contend that the rate break permits the terminal markets greater circuity of haul and therefore a wider drawing territory than would be the case if they operated exclusively on transit on one-factor rates.

The rate-break markets say that the reverse of this is true as shown by the following:

	Distance		Rates	
	Via Kansas City Miles	Via Fort Worth Miles	Via Kansas City Cents	Via Fort Worth Cents
Amarillo, Tex., to Memphis, Tenn	1,005	841	50	37
Excess via Kansas City	164	.....	13	....
Canyon, Tex., to Alexandria, La	1,232	920	57	36
Excess via Kansas City	312	.....	21	....
Canyon, Tex., to Little Rock, Ark	1,045	1,013	52	38
Excess via Kansas City	32	.....	14	....
Canyon, Tex., to Sedalia, Mo	645	1,229	42	39.5
Excess via Kansas City	.....	.....	2.5	....
Excess via Fort Worth	.....	586	....	....

Chicago and Sioux City are the only primary markets opposing the complaints. The other objectors are interior transit points, most of which now operate on transit under the rates to which the complaining markets are here seeking equalization by means of like transit. Chicago now has liberal transit arrangements in addition to its proportionals. It frankly concedes that it could not live under the absolute [fol. 587] rate-break rule now imposed upon the western markets. Nevertheless it insists that no relief should be here accorded complainants unless we restore to Chicago certain important rate adjustments and rate relations which that market had prior to our orders in the grain cases. It also asks that transit be established within the Chicago switching district in lieu of the present charges for cross-town switching therein. Sioux City insists that if any relief be accorded complainants, some relief of a like nature must be given to Sioux City.

Montana shippers want the rate break scrapped and a system of through overhead rates with transit established, on the theory that the proportional system penalizes long-haul traffic. They contend that, under a mileage scale which decreases in progression with the length of the haul, Montana would get rates to final markets 3 cents or more lower than those under the rate-break system. These interests are also of the opinion that the proportional rates are unduly low compared with the gathering rates and are therefore a burden upon the producers.

Oklahoma shippers take much the same view of the situation as do Chicago shippers. Oklahoma insists that no relief should be granted Kansas City, for example, until

through rates from Oklahoma to St. Louis and Chicago are reestablished on a basis lower than the combinations on Kansas City; that the southwestern proportionals should be increased; and that the rates from Oklahoma to Memphis should be reduced, to maintain the relation existing between rates from Oklahoma and those from competing States prior to the grain cases. By reason of carrier competition, the rates on which transit is here sought are now applicable through the complaining markets and are being freely used by interior transit operators on both sides of those markets. It seems to be the unanimous view of the interior transitors that if the markets are permitted to transit, it will give operators at such points a decided advantage over the interior, because of the ability of the markets to select favorable billing and to substitute grain from one section for that of another. Selection of billing and the opportunity to substitute one grain for another is inherent in all transit and is not peculiar to rate-break markets. We do not understand that the interior transitors desire to maintain the identity of each parcel of grain, or of the billing which goes with it, any more than do the shippers at the markets. If the present rate-break combinations were to be published as through one-factor rates, there could be no question but what the markets should be allowed to transit on them. The method of publication should make no difference in the ultimate result.

[fol. 588] In the Grain cases the rates from Oklahoma were related to those from contiguous States on a reasonable basis unaffected by the rate-break combinations. The contentions of Oklahoma here are the same as those urged by it in the second Grain case, and are fully set forth at page 330 of the report therein. 205 I. C. C. 301. On this record Oklahoma insists that the western trunk-line proportionals are unduly low, especially the proportional from Kansas City to St. Louis. The addition of this unduly low rate to reasonable inbound rates from Oklahoma to Kansas City, to make through rates to St. Louis, can hardly be viewed as producing unreasonable through rates from Oklahoma to St. Louis.

Referring now to the contentions of Montana. While it is customary to decrease the progression of distance scales with the length of the haul, that is not an absolute rule of rate making to be used without considering other factors. In the grain cases some of the producers urged

adoption of a distance scale with a uniform progression, on the theory that the short-haul traffic was mostly the heavy-loading grains, whereas the lighter loading and more valuable products moved for the longer distances. The use of such a scale would produce low rates for short hauls to nearby markets in the Central West and high rates for long hauls. Its use on traffic from Montana to the East would hardly seem desirable. It is true that the proportional rates are apparently disproportionate to the farm-to-market rates, if the proportionals be considered as separate rates for completed services and not as parts of through rates. If, however, proportional rates be viewed as parts of or progressions of through rates, which they purport to be, they may not properly be compared with local rates. The same contention might also be made as to transit balances of one-factor rates, such balances being, in substance, the same as proportional rates, except that the latter are separately published, are constant in measure, and reflect averages of transit balances. This is fully explained at pages 328 and 329 of our report in the second Grain case, 205 I. C. C. 301. We there referred to objections to the rate break which are similar to those now raised by Montana, and we pointed out that we did not initiate the proportional system but merely revised it. The history of proportional rates will be found at page 635 of our report in the first Grain case, 164 I. C. C. 619, and in numerous other reports dealing with those rates. It is to be observed that, while Montana interests contend that the present 12-cent proportional rate from Minneapolis to Chicago is disproportionate to the farm-to-market rates, nevertheless those same interests apparently suggest that Montana traffic should move under transit from Minneapolis to Chicago at a shipping cost of 7 cents, that being the transit balance or difference between the rates from central Mon- [fol. 589] tana to Minneapolis and those to Chicago under the scale suggested by the Montana shippers.

Carriers, shippers, and producers have united, with some dissenting voices, in asking us to modify our findings and order under which only two free transits are authorized, so that in the future three free transits may be available. We shall not repeat what we said in our prior reports in the Grain cases on this subject. The references are as follows: 164 I. C. C. 619, pages 653 and 654; 173 I. C. C. 511, pages 529 and 530; and 205 I. C. C. 301, pages 345 and

347. On the representations made in the instant proceedings a third free-transit stop will be authorized.

Returning now to the question of the exclusive rate break, it should be stated that some of the parties, we think, have been inclined to attribute all the difficulties which they have encountered since July 1, 1935, when the new grain rates went into effect, and some of their troubles dating farther back, to handicaps caused by the exclusive application of the rate break. That many of those engaged in the handling and milling of grain have had difficulties cannot be questioned, but we do not think that all these difficulties can correctly be attributed to the exclusive rate-break system. It is a matter of common knowledge that during recent years the grain crop has been below normal by many hundreds of millions of bushels. This shortage alone accounts for many an empty bin and for enormous losses in the volume of business, because, as is well known, to a certain extent mills and elevators are dependent for their profits on volume, and a sufficient volume of grain for business as usual has simply not been in existence. Inexplicable climatic changes, the loss of export business, droughts, floods, destructive rust, and grasshoppers, have dislocated to a great extent the normal channels of grain trade, actually reversed the current of traffic in important areas, and for months at a time have also reversed the relation between cash and futures prices with its damaging effect on the business of storing grain. To what extent these misfortunes, rather than the exclusive rate break, account for difficulties in this important trade only the future can reveal. But merely to mention them is sufficient to indicate that the new grain-rate structure was inaugurated under abnormal conditions which have continued into the present. Nor is there any general attack on the new structure as such. On the contrary, no one has advocated its abandonment or modification, except in certain particulars, and the carriers have criticised the level. What is urged upon us now is to make these particular changes to meet demonstrated difficulties, which changes will not adversely affect the structure as a whole. It was repeatedly stressed both at the hearing and in oral argument that complainants do not ask for a change in any existing rate, but merely [fol. 590] ask that they be permitted transit on present rates.

The original report in the first Grain case, dated July 1, 1930, concluded with the following paragraph, 164 I. C. C. 619, at page 698:

It would be impossible to take any comprehensive action without adversely affecting certain of the conflicting interests upon this record. Nothing but experience can demonstrate what the effect will be regarding certain of these issues. We therefore invoke the aid of carriers in establishing the rates herein prescribed with the greatest possible expedition in order that this new rate structure may receive a speedy test. All parties should cooperate to make careful note of the effect upon their interests, with the view to bringing to our attention from time to time, after a reasonable trial, those situations which may require further consideration.

No extensive rate structure can be made perfect nor can any rate structure be made permanent in any real sense in a changing world. To meet demonstrated difficulties and to overcome prejudicial features which early experience under the new rates had developed in several localities, we have heretofore modified the rates originally prescribed in the second Grain case in a number of particulars. For example, in Wheat Products from Twin Cities to Chicago, supra, we authorized transit at Minneapolis on wheat drawn from or through Duluth. In the second report in the Grain case, 215 I. C. C. 83, at page 95, we ordered canceled proportional rates between Chicago, Peoria, and St. Louis, because the rate-break combinations were unduly burdensome to industries at such points and were therefore unworkable. In the same report, pages 88 to 93, inclusive, we modified our previous finding as to transit at interior points such as Rush City and Hastings, Minn., on routes through rate-break markets, in order to aid such points to operate in competition with points on lower-rated routes. This was a modification of our previous finding in the first Grain case, 173 I. C. C. 511, page 516, on the same subject. We there said that the restriction under which interior transit points on routes through rate-break markets were held to the same basis of rates as the markets on the same routes was laid on the intermediate points as well as upon the markets, in order not to discriminate against the markets in favor of the intermediate points, and that the fact that

the markets may draw grain from a wider territory than the intermediate points hardly afforded justification for a difference in treatment. Complainants say that this is a correct statement of fact and of law, and that, conversely, our modification thereof is erroneous in both these respects. A return to our first view would, however, be a hardship upon the milling industry at many intermediate points, with little or no benefit to the markets, which would still be at a disadvantage in competing with other rate-break markets and interior points on lower-rated routes. [fol. 591] Evidence and arguments embraced within the instant proceedings warrant the conclusion that a fair trial should be given to certain additional changes thought to be necessary by their proponents to overcome alleged unlawful and otherwise unfair features. We are not sufficiently impressed by the additional information submitted to us, intended to show adverse factors in the business due to rates, to justify the issue of mandatory orders at this time. The two grain cases together have demonstrated the impossibility, even on the part of those most experienced, most competent, and most expert, of seeing in advance the consequences of the particular changes in rates and practices here under consideration. Apparently nothing but experience can furnish a demonstration, and even the demonstration of experience may not prove to be conclusive unless it can be had on a scale sufficiently large and at intervals of time sufficiently close, and under substantially similar conditions.

It is our conclusion that carriers should be permitted to file tariffs which will authorize restricted departures from the exclusive application of proportional rates at rate-break points for a limited period of time. The provisions to be published in these tariffs should represent the present best judgment of carrier and shipper representatives. They should provide for transit at rate-break points on rates now applicable via such points, including transit on proportional rates, in order that a quantity of transit thought to be a proper amount shall be provided. All parties are reminded that the modifications authorized herein should be surrounded by such effective safeguards as will make it impossible to reestablish, as a result thereof, substantially the dual system which was in effect prior to our decisions in the Grain cases, and which scarcely anyone has attempted to defend in any proceeding. It should be clear to every-

one that varying transit balances unrestricted are objectionable and unlawful for the reasons stated in our reports, and if the modifying tariffs herein authorized should prove to be a means of re-establishing them, further action will become necessary. These records will be held open for these or other contingencies which may develop. The tariffs authorized herein should bear expiration date of December 1, 1938, and may be filed on not less than 15 days' notice, except that tariffs providing for three free transits need not bear an expiration date.

An appropriate order will be entered.

SPLAWN, Commissioner, concurring in part:

On this record, I concur in the authorization of three free-transit stops.

The transit practice authorized with reference to rate-break points will not, in my opinion, settle the question of the proper adjustments that will be required to dispose [fol. 592] of the competitive situation of the interior points, but will elicit additional complaints. With the abandonment here of much that was considered fundamental in the original report, further departures from the existing basis of rates and practices will doubtless follow in quick succession. It would be advisable to make the inevitable readjustments now rather than to attempt to dispose of them in piecemeal fashion.

EASTMAN, Commissioner, dissenting:

The so-called "rate-break" plan of making rates on grain and grain products is a method under which through rates are broken up into two or more factors, applying to, from, and between so-called "primary" markets. Thus, grain moves from the farms in Kansas into Kansas City on rates which are the same whether or not the movement ends at that point or continues to some other destination, such as Chicago. In the latter event, a proportional rate is charged from Kansas City which is on a much lower level than the inbound rate, and applies whether the grain moves on without stop at Kansas City or is stopped there and either stored for a time or converted into flour or other grain product. Under the normal method of making rates, through one-factor rates would apply from the farms to Chicago and if a shipment were stopped in transit at Kan-

sas City it would pay for the subsequent haul to Chicago the difference (called the "balance") between the through rate to Chicago and the rate into Kansas City.

Normally, since rates ordinarily decrease per ton-mile with distance, the balance beyond Kansas City would vary with the point of origin of the grain. Under the rate-break plan, these varying balances are displaced by a uniform proportional rate, which is supposed to be about what the balances would average. It follows that the proportional rate is higher than some of the balances which would otherwise be charged, and lower than others.

This rate-break plan is variously defended, particularly on the grounds that it tends to simplify the rate structure and protect the carriers' revenues and that it enables a number of "primary" markets to make their own prices on grain, to some extent independent of the basic Chicago prices. These various alleged advantages have been exploited in our prior reports, together with the alleged grave disadvantages of permitting the plan to be adulterated by the alternative application of transit balances. When the grain rates in western territory were revised as a result of our investigation in Grain and Grain Products, supra, a principal and much-advertised reform was the establishment of an unadulterated or "exclusive", as it was called, rate-break plan.

[fol. 593] It is a characteristic of the rate-break plan that it cannot be applied generally, so that its application has always been confined to a limited number of the larger markets. These markets have vigorously supported the plan, but in the investigation just mentioned admitted that many abuses had developed and in general favored the "exclusive" system. At the time I said that "if the markets are actually confined to rate breaks in the manner proposed and are not allowed transit on any through rates, I doubt whether they will find the results altogether satisfactory." (164 I. C. C. 619, 730.) This is what happened. The ink was hardly dry on the new rates before the markets began to complain of the "exclusive" feature and to ask the opportunity to use alternative transit "balances". Not only that, but the Commission began to yield to these complaints.

There has been one concession after another, and now a flock of them are being granted. More will follow. The "exclusive rate-break" plan is on the way to complete dis-

integration. It is a matter of regret that it was not given a full and fair trial.

Inasmuch as the proportional rates from the markets under the rate-break plan are supposed to be a fair average of the transit balances which would otherwise apply, it follows inevitably that when the rate-break markets are allowed the alternative use of balances which are lower than their proportional rates, they are given an unfair advantage over markets which are confined to transit and do not have the benefit of proportional rates. It also follows inevitably that the use of circuitous and wasteful routes is increased and the earnings of the carriers depleted. Moreover, the process of disintegration will in the end be of no advantage to the rate-break markets, because a concession gained at the expense of some competitive market will sooner or later be followed by a similar concession to the latter. An unfair distribution of concessions will not long be tolerated. Most of the trouble which the markets have experienced since the rates were revised has been due to extraordinary conditions, like drought, which had nothing to do with the rate structure. It is unfortunate that the state of restless dissatisfaction brought about by these conditions has been allowed to wreak itself upon the rate structure.

The solicitude for the markets and the mills on the part of the carriers and on our own r rt engrafts upon the grain-rate structure all manner of wasteful privileges and concessions for which the carriers must in some way receive compensation. The accepted method has been to pad the grain rates. I am convinced that the result is greatly to increase the cost of distribution at the expense of the farmers. This is a matter which I discussed at some length in a separate opinion at the time of the first report in the grain-rate investigation (164 I. C. C. 619, 706-731), [fol. 594] and all that has since transpired has served to strengthen the views which I then expressed. What is now happening is not progress but retrogression.

PORTER, Commissioner, dissenting in part:

In two important particulars I disagree with the action here taken.

In my separate expression of partial concurrence in Grain and Grain Products, 205 I. C. C. 301, 478, in commenting upon the granting in that report of two free stops for tran-

sit, I said that I was "committed to the doctrine that a special service of value to the shipper and of expense to the carrier, enjoyed by only a portion of the shippers, should be paid by those who use it and the cost borne by them and not by the shipping public generally." The lapse of time serves to convince me all the more that the doctrine then expressed is sound. The extension here of the free transits to a third is but another step away from that principle. This important subject is dealt with by the majority in a single brief paragraph in which there will not be found one statement of fact as to why this free expensive privilege should be further extended. The only reason advanced is that "carriers, shippers, and producers have united, with some dissenting voices, in asking us" to make the change. I am not aware of a single actual producer who has made such a request. Natural enough, if the dealers in grain and grain products can secure further valuable services of the carriers free of charge, they are anxious to see it done. As to the carriers, it is not at all uncommon, when confronted by a request from powerful shippers, that they should manifest a desire to comply. These reasons impress me as entirely lacking in substance sufficient to warrant us in imposing upon the carriers this additional drain upon their revenue, particularly at a time when nearly all of the large grain-carrying railroads of the Midwest are in bankruptcy.

In my former expression I also recorded my opinion that the prescribed rate-break adjustment was unbalanced, in that it gave too much to the primary markets in the relatively low proportionals and too little to the farmer and the country elevator in the relatively high gathering rates to the markets. The granting here of free transit at primary markets under those proportionals has the effect of handing just that much more to the markets without corresponding benefits to the country grower or dealer, and to that extent aggravates the unbalanced situation referred to. In addition, it also adds greatly to the possibility of further abuses of transit. This will be obvious from one illustration. A car of grain may move from a nearby Kansas point to Kansas City and there receive its first free transit. At that point it is 452 miles from Chicago, to which the proportional rate is 15 cents. It may then [fol. 595] move 200 miles to Omaha and there receive a second free transit. After this it may move another 137 miles

to Fort Dodge, 373 miles from Chicago, and there receive a third free transit. After having moved 337 miles from the first primary market and receiving two free stops for transit, it will then still be only 79 miles closer to its destination than when it left the first market. Nevertheless, it may then move to Chicago on the 15-cent proportional from Kansas City.

This is bound to give additional benefits to the primary markets and result in added wasteful transportation with additional drains upon the carriers' revenue, without any important benefit to the man on or near the farm, who is even now contributing relatively more than a just share to the transportation burden.

I am inclined to believe that, after almost a decade of exhaustive study in attempted regulation of this grain-rate adjustment at a cost of hundreds of thousands of dollars, the net result which will probably follow the action here taken is that, within a brief period, we will find ourselves practically where we started.

I am authorized to state that Commissioner Tate joins in this expression.

Lee, Commissioner, dissenting:

In my separate expression in the Grain case, 205 I. C. C. 301, I expressed the opinion that the local rates from country origins to the rate-break markets were much too high in comparison with the proportional rates from those markets. For example, the local rate from Wichita, Kans., to Kansas City was 17 cents for 218 miles, compared with the proportional rate from Kansas City to Chicago of 15 cents for 452 miles. Also, local rates from Fargo and Jamestown, N. Dak., to Minneapolis were 16.5 and 19.5 cents for distances of 252 and 344 miles, respectively, compared with the proportional rate from Minneapolis to Chicago of 12 cents for 407 miles. I reiterate and emphasize the above observation. I emphasize it because the proportional rates are being further reduced, in substance and effect, by the extension of transit to the rate-break markets on indirect routes. In my opinion these further modifications of the findings in the Grain case should not be made without also giving further consideration to the level of the rates from country origins to the rate-break markets and other destinations in various parts of the western district,

which are a part of the general grain-rate adjustment. I cannot reconcile, for example, rates of 24 cents from Rosalia, Wash., to Seattle, 304 miles, and from Lewiston, Idaho, to Portland, 356 miles, or rates of 44 cents from American Falls to San Francisco, 825 miles, and 52 cents from Cambridge, Idaho, to San Francisco, 1,049 miles, with a rate [fol. 596] of 15 cents from Omaha to Chicago, 487 miles over the direct route, and 652 miles over the indirect route through Kansas City, with transit at Kansas City. It is no answer to say that the rate from Omaha to Chicago is a proportional rate, and therefore a part of a through rate. The inbound local rate from the country origin to Omaha comprises the other component of the same through rate. Moreover, in scope of application and in service the proportional rate has all of the attributes of a local rate.

Of course, the grain dealers and millers, wherever located, are entitled to just and reasonable rates. But I cannot subscribe to a succession of modifications of the findings in the Grain case for the benefit of those interests without demanding consideration also of the rights of the producers who ship from country origins to the rate-break markets and to other destinations. These observations are especially pertinent to the rates in the Pacific Northwest, which were made unwarrantably high in comparison with the rates in other territories, as I also pointed out in my separate expression in the Grain case.

There is no justification for the finding in the report that transit on the rate of 55 cents from the north Pacific coast to Minneapolis and Duluth should be restricted. The transit now accorded at interior transit points on this route is certainly justified by comparison with that which will result from the general modifications of the findings in the Grain case in respect of transit in this report. Under those findings no undue prejudice should result to the Missouri River markets, in favor of the interior Kansas transit operators, because the same transit can be permitted at those markets. The widest possible outlet should be afforded this Pacific Northwest wheat, as a recoupment for the loss of export wheat during the past few years. The application of this rate should be permitted over the indirect routes, as well as over the direct routes, to Minneapolis and Duluth. I can see no justification, whatever, for the singling out of this adjustment as an exception to the

general relaxation of the transit restrictions throughout the entire western district.

I am impressed by the contention of the millers of North Dakota and Montana that the granting of the petition of the carriers serving Minneapolis for modification of the findings in the Grain case to permit the establishment and maintenance of one-factor rates from Missouri River markets to Chicago, on wheat milled at Minneapolis for reshipments to destinations east of the Indiana-Illinois State line, on the basis of 8 cents, instead of the proportional rate of 12 cents, over the rate at Minneapolis, will result in damage to them and in corresponding benefit to the mil- [fol. 597] lers at Minneapolis. The contention is that, by the simple expedient of substituting flour made from Montana wheat for flour made from Missouri River wheat, the Minneapolis millers can get the benefit of an outbound charge of 8 cents from Minneapolis to Chicago on their Montana and North Dakota wheat flour, while contemporaneously the North Dakota and Montana millers will be compelled to pay the proportional rate of 12 cents on all of their shipments, made from the same kind of North Dakota and Montana wheat. This modification benefits Minneapolis, but it is unfair to Montana and North Dakota.

I am opposed to a third stop in transit without separate charge. In the Grain case the maximum of two such stops was prescribed after a thorough consideration of all of the facts and arguments presented upon a comprehensive record. The report gives no reasons for the granting of permission for the third stop. It merely recites that most of the parties, carrier and shipper, want it. In some parts of the country there is frequently no necessity for even two transit stops. This is largely true of the Pacific Northwest, where the one stop for milling is all that is required. A blanket authorization of three transit stops throughout the entire western district will tend to eventual requests of the carriers for increased rates. The Commission should assume that the carriers regard the present rates as high enough to absorb the additional costs of the third transit, and that they will not base any future request for increased rates on the fact that they have granted that transit.

Commissioner Mahaffie did not participate in the disposition of this proceeding.

[fol. 598] Order

Served Aug. 2, 1937.

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 27th day of July, A. D., 1937.

Grain Case Modifications

No. 17000, Part 7

Grain and Grain Products

No. 27580

ATKINSON MILLING COMPANY, et al.

v.

THE ALTON RAILROAD COMPANY, et al.

No. 27628

BOARD OF TRADE OF KANSAS CITY, MO.

v.

THE ALTON RAILROAD COMPANY, et al.

No. 27628 Sub-No. 1

OMAHA GRAIN EXCHANGE, et al.

v.

THE ALTON RAILROAD COMPANY, et al.

Upon further consideration of the record in No. 17000, Part 7, Grain and Grain Products Within The Western District and for Export, and of the records in Nos. 27580, 27628, and 27628 (Sub No. 1):

It is ordered, That the findings and orders previously entered in No. 17000, Part 7, Grain and Grain Products Within The Western District And For Export be, and they are hereby, so modified as to permit the establishment and maintenance on not less than 15 days' notice of tariffs au-

[fol. 599] thorizing three free stops in transit without limit as to expiration date, and further authorizing until December 1, 1938, departures from the exclusive application of the rate-break combinations at proportional rate points in conformance with the findings herein.

By the Commission: W. P. Bartel, Secretary. (Seal.)

[fol. 600] EXHIBIT 12 TO COMPLAINT

Interstate Commerce Commission, Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and order of the Commission, filed and entered July 12, 1938, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases listed in the footnote on the first page of said report, the original of which is now on file and of record in the office of this Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 11th day of December, A. D. 1939.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 601] Interstate Commerce Commission

Grain Case Modifications

No. 17000

Rate Structure Investigation, Part 7

Grain and Grain Products within the Western District and for Export

No. 27580 [1]

ATKINSON MILLING COMPANY, et al.

v.

ALTON RAILROAD COMPANY, et al.

Submitted May 17, 1938. Decided July 12, 1938

Upon reargument, complainants' request for an affirmative finding of undue prejudice to rate-break markets on indirect routes, because of lack of transit on rates less than the rate-break combinations over those routes, denied, and

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[1] This report also embraces No. 27628, Board of Trade of Kansas City, Mo. v. Alton Railroad Company et al., and No. 27628 (Sub-No. 1), Omaha Grain Exchange et al., v. Same.

temporary permission to grant such transit, to meet emergency conditions described in the last report, permitted to expire as of December 1, 1938.

Appearances same as in original report, and Dana T. Smith, C. R. Sutherland, H. H. Larimore, John A. Wright, and Henry Christianson for defendants, and Ernest E. Blincoe, H. M. Hancock, C. C. Kelly, and Lon H. Powell for interveners.

Report of the Commission on Reargument

BY THE COMMISSION:

As a result of the findings in Grain and Grain Products, 164 I. C. C. 619, 173 I. C. C. 511, 205 I. C. C. 301, 215 I. C. C. 83 (hereinafter called the Grain Case), the fundamental rate adjustment affecting the transportation of grain and grain products throughout the western district, and transit thereunder, so far as here in issue, as it existed immediately prior to the decision herein of July 27, 1937, in Grain Case Modifications 223 I. C. C. 235 (herein called the last report), was substantially as follows.

The through rates from producing areas back of Minneapolis, Duluth, Sioux City, Omaha, and Kansas City, so-called rate-break markets, to Chicago, St. Louis, and Memphis, important second markets and gateways, were re- [fol. 602] quired to be the combinations of local rates to the rate-break markets and the established proportional rates beyond. The proportional rates from the rate-break markets were lower than the local rates from those markets, and on transited shipments were applicable only upon surrender of freight bills, registered with the transit bureau and surrendered at the time of the outbound movement, covering inbound rail transportation of tonnage, equivalent in kind or its products, to that of the outbound shipment.

These rate-break combinations were required to be strictly observed. For example, from Holdrege, Nebr., to Chicago the applicable rate was the combination of the local rate to Chicago and the proportional rate beyond, over the direct route, and the combination of the local rate to Omaha, the proportional rate thence to Kansas City, and the proportional rate thence to Chicago, over the indirect route through Omaha and Kansas City, on shipments stopped in transit at Omaha and Kansas City.

The proportional rate applicable from Omaha to Chicago over the direct route could also be applied over the indirect route through Omaha and Kansas City on shipments not stopped at any transit point beyond Omaha, or on shipments stopped at transit points other than Kansas City beyond Omaha; but the combination of the proportional rates from Omaha to Kansas City and from Kansas City to Chicago was obligatory on shipments stopped in transit at Kansas City or at both an interior transit point and Kansas City.

To be more specific, the applicable rates from Holdrege to Chicago were as follows: The combination of the local rate of 16.5 cents to Omaha and the proportional rate of 15 cents beyond on shipments over the direct route, or over the indirect route through Omaha and Kansas City when not stopped at any point beyond Omaha, or when stopped at a transit point other than Kansas City beyond Omaha; and the combination of the local rate of 16.5 cents to Omaha, the proportional rate of 6 cents thence to Kansas City, and the proportional rate of 15 cents thence to Chicago, on shipments stopped at Kansas City, or both at an interior point and at Kansas City.

Similarly, a one-factor local or joint rate could be equalized over an indirect route through a rate-break market only on shipments not stopped at all on the indirect route, or on shipments stopped at an interior transit point other than the rate-break market on that route. For example, the local rates from Holdrege were 16.5 cents to Omaha and 18.5 cents to Kansas City. The rate of 18.5 cents to Kansas City could be applied through Omaha only on shipments not stopped at any point on the route through Omaha, or on shipments stopped at a transit point other than Omaha on that route. The combination of the local rate of 16.5 cents to Omaha and the proportional rate of 6 cents [fol. 603] beyond was required to be paid on shipments stopped in transit at Omaha.

The lack of transit at rate-break markets on indirect routes on the basis of one-factor rates lower than the rate-break combinations over those routes, when such lower rates were applicable over those routes, was the immediate occasion for the proceeding covered in the last report. No. 27580 presents this issue only in respect of proportional rates, such as from Minneapolis-Duluth and the Missouri River markets to Chicago, St. Louis, and related points,

for example, lack of transit at Kansas City on the basis of the porportional rate from Omaha to Chicago which was applicable via Kansas City on continuous shipments and on shipments stopped in transit at points other than Kansas City. No. 27628 presents the same issue in respect not only of the proportional rates mentioned, but also of one-factor rates from country origins, for example, lack of transit at Omaha on the basis of the one-factor rate from Holdrege to Kansas City, which was applicable via Omaha on continuous shipments and on shipments stopped in transit at points other than Omaha. Subnumber 1 to No. 27628 made substantially the same allegations as No. 27628. No. 27580 is brought under sections 1, 2, and 3, and No. 27628 and subnumber 1 to No. 27628 under sections 1 and 3. The complaints, interpreted in the light of the contentions of record, allege an undue preference not only of transit points other than the rate-break markets on indirect routes, but also in favor of transit points on direct routes between the same points, and in favor of transit points generally throughout the western district.

In the last report we found, at page 246, that there was no basis for a finding of unreasonableness or undue prejudice in support of a mandatory order:

* * * We are not sufficiently impressed by the additional information submitted to us intended to show adverse factors in the business due to rates to justify the issuance of mandatory orders at this time. * * *

In that report also, however, we permitted the carriers, for the emergency reasons hereinafter shown, to grant the additional transit sought, for the limited period to December 1, 1938, and therefore to depart temporarily from the requirement of strict adherence to the application of the proportional rates from the rate-break markets on all routes, prescribed in the Grain Case. The permission has not been utilized by the carriers, except in respect of the rate from the Missouri River markets through Minneapolis to Chicago, on shipments destined east of the Illinois-Indiana line, on the basis of 8 cents instead of the proportional rate of 12 cents from Minneapolis to Chicago, which was established by the carriers in accordance with their pending application for authority to make that ad- [fol. 604] justment. The refusal of the carriers to grant

the additional transit requested, under this authorization, is the immediate occasion for the present proceeding upon reargument, granted in response to petitions of complainants for an affirmative and permanent order, based upon the old record.

In the petitions for an affirmative order there are modifications of the allegations and prayers of the complaints. In the petition in No. 27628 the allegations of the complaint are modified by limitation to the lack of transit at the rate-break markets on indirect routes on the basis of certain definitely named proportional and other one-factor rates now applicable over the indirect routes. The rates so listed cover the main body of important rates for the transportation of grain and grain products through the several rate-break markets, both from other rate-break markets and from country origins. In the petition in subnumber 1 to No. 27628 the allegations of the complaint are modified to cover only the lack of transit at Omaha on the basis of the proportional rate from Kansas City and other lower Missouri River markets to Chicago, Peoria, and intermediate and related points.

While the issues are therefore both of unreasonableness under section 1 and undue prejudice under section 3, at the reargument emphasis is again placed upon the alleged undue preference of transit points other than the rate-break markets on indirect routes. It will be helpful first to discuss this latter situation.

In all of the reports in the Grain Case the rule for the strict application of the proportional rates on shipments from the rate-break markets, on both direct and indirect routes, has been rigidly adhered to. The reasons for this requirement are summarized in a general way in the report on further hearing in that case, at page 334, as quoted at page 237 of the last report:

> The main reasons for the requirement of the exclusive application of the rate-break combinations were that transit balances less than the proportional rates out of the rate-break markets tended to disrupt the rate-break combination, disorganize the general rate structure, make uncertain in advance the outbound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates, depress the price of grain at the rate-break markets, and, by direct reflection, at the country points, and reduce the revenues of the carriers.

The transit balances referred to in the quotation may be illustrated by balances of 9 cents, in lieu of the proportional rate of 15 cents, from Kansas City to Chicago, and 2 cents, instead of the proportional rate of 6 cents, from Omaha to Kansas City, that would result from the requested transit on the proportional rate from Omaha to Chicago and on the rate from Holdrege to Kansas City, respectively.

[fol. 605] In the original report an exception to the exclusive application of the rate-break combinations was permitted on continuous shipments over an indirect route through a rate-break market, in order to permit the carrier over the indirect route to meet the competition of the carrier over the direct route. The rate-break combination over the indirect route, however, was required on shipments stopped in transit either at the rate-break market or other point on that route. For example, the proportional rate from Omaha to Chicago, applicable over the direct route, might also be applied over the indirect route through Kansas City on shipments not stopped in transit, but the combination of proportional rates to and from Kansas City was applicable on shipments stopped in transit at Kansas City or other point on the route through Kansas City. There was this further exception, however, that transit on the basis of the direct rate might be given on a shipment stopped at a point on the indirect route other than Kansas City, when that point was also a transit point on the direct route.

In the report on further consideration of the record on further hearing in the Grain Case, 215 I. C. C. 83, 88-93, the findings in the Grain Case were further modified to permit of transit at points other than the rate-break market on an indirect route, even when not also transit points on a direct route, on the basis of the lower rate applicable over the direct route, provided that the shipments were not also stopped in transit at the rate-break market. For example, the proportional rate from Omaha to Chicago, applicable over the direct route, could also be applied on shipments stopped in transit at Falls City or Topeka, on the route through Kansas City, provided it was not also stopped in transit at Kansas City, but the rate-break combination was continued on shipments stopped in transit at Kansas City, or both at Falls City or Topeka and at Kansas City.

The latter modification was made only after careful consideration, and upon our conviction that no undue prejudice would thereby result to the rate-break market on the indirect route. It merely recognized the right of the transit point other than the rate-break market to its form of transit, which in no way interfered with the different form of transit available to the rate-break market, namely, the rate-break combination. It also treated the fact that the shipment also passed through the rate-break market, without stopping there, as an incidental fact, of no more consequence than if the shipments were not routed through the rate-break market, 215 I. C. C. 83, 92.

Complainants themselves do not want the transit in question taken away from the points other than the rate-break market on the indirect route. In pressing their contention [fol. 606] of undue prejudice under section 3 they assume that an order for its removal would be complied with by the establishment of transit at the rate-break market instead of by its cancellation at the other points. They say they cannot conceive of the carriers complying with a mandatory order in any other manner. Only when pressed for a definite commitment, in the event of the carriers' exercise of the other alternative, do they say that they must ask for the cancellation of the transit at these other points if it is not established also at the rate-break market.

While complainants emphasize the competition of transit points on the indirect route, the record is clear that this competition is but a minor part of the competition of transit points generally, on all routes between the same and other points in the western territory, covered by the general complaint of undue preference. For example, the grain dealers and millers at Kansas City are seeking transit on the basis of the proportional rate from Omaha to Chicago for the purpose of placing them in a better competitive relation not only with transit points on the route through Kansas City, such as Falls City and Topeka, but also, and more particularly, with the much more important transit points on the direct route from Omaha to Chicago, such as Des Moines, Cedar Rapids, Davenport, and with Omaha itself, as well as with transit points generally in this western territory. Cancelation of the transit accorded points on the indirect route, through a rescinding of our modification of the findings in the Grain Case to permit of that transit, would deprive these interior transit points of the same kind

of transit accorded interior transit points on other routes and, as found in the last report, page 245, would not materially benefit complainants, who would still be confronted with their major competition:

> • • • A return to our first view would, however, be a hardship upon the milling industry at many intermediate points, with little or no benefit to the markets, which would still be at a disadvantage in competing with other rate-break markets and interior points on lower-rated routes. • • •

It seems clear that the transit at points other than the rate-break market on the indirect route, resulting from the further modification of the findings in the Grain Case, was at most merely an aggravation of a general competitive situation which had already foreshadowed these complaints, and that it afforded a welcome additional argument in the general cause rather than a sound basis for a claim of undue preference.

Here the allegations of undue preference involv (1) shipments transited at points on direct routes, (2) continous shipments, without transit, over an indirect route, through an intervening rate-break market, and (3) shipments over a route of the latter kind transited at points other than the rate-break market. Using again the familiar [fol. 607] illustration of lack of transit at Kansas City on the basis of the proportional rate from Omaha to Chicago: (1) A transit point on the direct route, such as Cedar Rapids, cannot be said to be unduly preferred; nor can Omaha or Chicago, each with the benefit of the direct route; (2) the benefit here is wholly to the carrier over the indirect route, in its competition with the carrier over the direct route; and (3) a mere finding of undue prejudice here, even if warranted, could be satisfied by cancelation of transit at the points other than Kansas City, instead of establishing it at Kansas City, but such a compliance would not satisfy the main complaint. An order requiring compliance by the establishment of transit at Kansas City on the same basis as at the other points on the same route, coupled with an order for a continuation of transit also at the other points, would merely be a subterfuge, intended to accomplish, under the guise of section 1, the correction of what is primarily alleged to be an undue preference under section 3.

In the past we have been loath to order transit under section 1, and have done so only in exceptional instances, and in respect of limited adjustments. Transit on grain and grain products is now liberal, to say the very least. To require the additional transit requested, under either section 1 or section 3, would be to impose an additional burden upon the carriers in respect of one of their most comprehensive adjustments and important groups of commodities, and, incidentally, at a time when they are least able to bear it.

To grant the prayer of complainants would be seriously to disturb the rate-break adjustment. It is idle to contend, as complainants do, that the additional transit requested would not have that effect. In this respect we are compelled to modify the views expressed in the last report, page 244, upon further consideration of the requests of complainants and the potential effects of their granting. The additional transits definitely listed in the petitions for an affirmative order would, if permitted, cover the main body of rates on grain and grain products through the several rate-break markets, as already stated. They would make applicable a great number of transit balances lower than the proportional rates out of the rate-break markets on indirect routes and would lead to a progressive increase in the number of such balances, in response to requests for the application of the same principle in other instances, which could not consistently be denied. Another short step would be the establishment of one-factor rates less than the rate-break combinations over direct routes.

The rate-break adjustment is entitled to a thorough test over an adequate period of normal conditions in the grain [fol. 608] trade. It has received no such fair test up to the present time. The permission temporarily to depart from it, granted in the last report, was an emergency measure, responsive to distinctly abnormal conditions in the trade, which had existed practically from the time of the establishment of the rate-break adjustment effective July 1, 1935, up to the date of submission of this case on the original record June 11, 1937. In the last report these abnormal conditions were definitely shown to be reflective of crop shortages, the dislocation of normal channels in the grain trade (due to climatic changes, loss of export business, droughts, floods, grasshoppers, and destructive rust), and the reverse relation of cash and future prices. There is

before us here merely a reargument upon the old record and no showing that these emergency conditions still exist. The greatest final difficulty was a shortage of grain supply, particularly wheat. It is a matter of common knowledge that the wheat crop was bountiful last year, and that it bids fair to achieve record proportions this year, and also that the export market shows signs of revival.

We find that the present adjustment of rates on grain and grain products throughout the western district does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage; that the rate-break markets and interior transit points on all routes are merely accorded the benefit of their respective forms of transit, each without interference from the other; that cancelation of the transit in question at points other than the rate-break markets on indirect routes would unduly prejudice such points and unduly prefer interior transit points subject to the same form of transit on other routes; that an order requiring transit at rate-break markets on indirect routes on the basis requested, under section one, is not warranted either under our general policy as to such transit or upon the facts attendant upon the transportation of grain and grain products; that the granting of the transit requested would break down the rate-break adjustment prescribed in the Grain Case; that said adjustment should be abandoned, if at all, only upon demonstration of its failure as a workable adjustment, over an adequate period of normal conditions in the grain trade; that such a test has not been given the adjustment; that the permission to depart from the requirements of that adjustment until December 1, 1938, was in response to emergency conditions in the grain trade, as definitely illustrated in the last report; that said emergency conditions are not shown now to exist; that said temporary permission will be allowed to expire on the date mentioned; and that the complaints in Nos. 27580, 27628, and 27628 (Sub-No. 1) will be dismissed.

[fol. 609] Meyer, Commissioner, dissenting:

In our original report in this proceeding, 164 I. C. C. 619, at page 698, we said:

It would be impossible to take any comprehensive action without adversely affecting certain of the conflicting interests upon this record. Nothing but experience can demon-

strate what the effect will be regarding certain of these issues * * *. All parties should cooperate to make careful note of the effect upon their interests, with the view to bringing to our attention from time to time, after a reasonable trial, those situations which may require further consideration.

This language was quoted in 223 I. C. C. 235, at page 245. From that time to the present, formal and informal suggestions for modification of the grain-rate structure established in the grain cases have been made. In most instances carriers and shippers agreed upon modifications to which we could assent. It is unnecessary to catalogue them here. They are known to all parties in the proceeding.

The additional changes which we are here asked to require to be made and certain changes voluntarily established under authority of tariff publications with the expiration date of December 1, 1938, are denied by the instant report. I do not believe that this denial is justified. Nothing really substantial or vital has been brought to my attention which warrants the taking away from the Twin Cities the transit or proportional rates which we authorized provisionally about one year ago; nor am I persuaded that it is wise not to experiment at least for a limited period of time with transit on other intermarket proportional rates, as illustrated by the movements under the proportional rate from Kansas City through Omaha to Chicago, and from Omaha through Kansas City to Chicago. The general level of the rates effective July 1, 1935, permitted a maximum of two stops for transit without additional charge. Extension of transit services to a maximum of three by the voluntary action of the carriers has no connection with the complaint here made to require transit on intermarket proportional rates and on other one-factor rates effective through rate-break markets on indirect routes. In my opinion the complaining millers and markets have a just grievance against the present lack of transit at the rate-break markets on these rates and I should be glad to assume my share of the responsibility to permit of that transit. It has been truthfully said that abnormal conditions have prevented a fair trial of the new rates as a system. This system, as everyone in the business knows, is characterized by gathering rates, proportional rates, rate breaks, overhead rates, and transit. Reasonable

changes are essential in meeting meritorious complaints. If the rate-break system, either strictly observed or modi- [fol. 610] fied as I herein suggest, cannot be made to work with reasonable satisfaction to those who use and pay for the transportation, some other system must be substituted. The only logical substitute would apparently be a system of one-factor overhead rates or an absolute or modified distance basis with transit and a cancelation of the proportional rates and rate-break combinations. In connection with such an adjustment, if adopted, a separate transit charge is advocated by some. An adjustment of that kind, especially if on a strict mileage basis, might seriously affect the channels of trade and make the orderly marketing of grain a more difficult problem. It might also lessen the price to the producer in order to afford a greater margin for market operations which the grain dealer at the market might feel necessary in view of the absence of the proportional rates as a known maximum factor in the outbound charge. Personally, I think the soundest thing to do is to adhere to the system of rate breaks and proportional rates as it now exists, and modify it whenever the weight of the evidence warrants it. In my judgment the weight of the evidence justifies a modification here.

I am authorized to state that Commissioner Caskie joins in this expression.

Commissioners Aitchison, Lee, and Rogers did not participate in the disposition of this proceeding.

[fol. 611] ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of July, A. D. 1938.

Grain Case Modifications

No. 17000, Part 7

Grain and Grain Products

No. 27580

Atkinson Milling Company et al.

v.

The Alton Railroad Company et al.

No. 27628

Board of Trade of Kansas City, Mo.

v.

The Alton Railroad Company et al.

No. 27628 (Sub-No. 1)

Omaha Grain Exchange et al.

v.

The Alton Railroad Company et al.

It appearing, That on July 27, 1937, the Commission made and filed its report and entered its order in the above-entitled proceedings, and that, in response to petitions of complainants, the Commission granted and heard reargument in said proceedings;

It further appearing, Tha , on the date hereof, the Commission has made and filed its report on reargument, which said report, and the report and order of July 27, 1937, are hereby referred to and made parts hereof;

It is ordered, That the complaints in nos. 27580, 27628 and 27628 (Sub-no. 1) be, and they are hereby, dismissed.

(Seal) By the Commission.

W. P. Bartel, Secretary.

[fol. 612] EXHIBIT 16 TO COMPLAINT

Interstate Commerce Commission, Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and order of the Commission, filed and entered March 13, 1939, in Docket No. 17000, Rate Structure Investigation, Part 7, Grain and Grain Products within the Western District and for Export, and related cases listed in the footnote on the first page of said report, the original of which is now on file and of record in the office of this Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 11th day of December, A. D. 1939.

(S) W. P. Bartel, Secretary of the Interstate Commerce Commission.

[fol. 613] Served March 17, 1939

Interstate Commerce Commission

Grain Case Modifications

No. 17000

Rate Structure Investigation, Part 7

Grain and Grain Products Within the Western District and for Export

No. 27580[1]

Atkinson Milling Company et al.

v.

Alton Railroad Company et al.

Submitted February 2, 1939. Decided March 13, 1939

1. Upon reargument, previous findings denying requests with respect to issues of undue prejudice of rate-break markets on indirect routes, because of lack of transit on rates less than the rate-break combinations over those routes, affirmed.

2. Transit authorized on coarse grains at Minneapolis under the proportional rate from Duluth to Chicago and related gateways, same as now applicable on wheat.

3. Findings of July 12, 1938, requiring discontinuance of transit at Minneapolis on a proportional rate from the Missouri River markets to Chicago, Ill., and related gateways, lower than that prescribed in the Grain Case, affirmed.

4. Order in Investigation and Suspension Docket No. 4558, Wheat and Products via Twin Cities to East, vacated and the proceeding discontinued.

5. Prior reports herein are 164 I. C. C. 619, 173 I. C. C. 511, 205 I. C. C. 301, 215 I. C. C. 83, 223 I. C. C. 235, and 229 I. C. C. 9.

Appearances shown in prior reports, and R. P. Green, Emil Gall, and Charles Munn.

Report of the Commission on Reargument

Mahaffie, Commissioner:

In our last report herein, on reargument we found that the adjustment of rates on grain and grain products throughout the western district did not subject rate-break markets on indirect routes to undue prejudice or give to points on the same or other routes undue preference; that the rate-break markets and interior transit points on all routes, under the present adjustment, are merely accorded [fol. 614] the benefit of their respective forms of transit; that cancelation of the transit privilege at points other than the rate-break markets on indirect routes would unduly prejudice such points and unduly prefer interior transit points subject to the same form of transit on other routes; that an order requiring transit at rate-break markets on indirect routes on the basis requested by complainants was not warranted upon the facts of record; that the granting of transit requested under proportional rates out of the rate-break markets would destroy the adjustment prescribed in Grain and Grain Products, 164 I. C. C. 619, as modified, hereinafter referred to as the Grain Case; that the adjustment required by the decision in the Grain Case should be abandoned, if at all, only upon proof that it is not workable; and that no such proof as yet had been offered.

We further found that permission to depart from the adjustment required in the Grain Case, in response to emergency conditions previously shown to exist in the grain trade, should not be extended beyond December 1, 1938, as the record showed that the said emergency conditions no longer existed in the grain trade.

Upon petitions of various parties of record the proceedings were reopened for reconsideration and reargument lasting two full days, February 1 and 2, 1939. Three main questions are here for reconsideration: (1) Whether transit should be permitted under the proportional rates from rate-

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[1] This report also embraces No. 27628, Board of Trade of Kansas City, Mo. v. Alton Railroad Company et al.; No. 27628 (Sub-No. 1), Omaha Grain Exchange et al. v. Same; and Investigation and Suspension Docket No. 4558, Wheat and Products via Twin Cities to East.

break markets, particularly whether Omaha should have transit at Kansas City under proportional rates and whether Kansas City should have similar transit arrangements at Omaha; (2) whether our findings should be further modified to authorize transit on coarse grains at Minneapolis under the proportional rate from Duluth to Chicago and related gateways, the same as now applies on wheat; and (3) whether our findings of July 12, 1938, in the last report on reargument, 229 I. C. C. 9, should be modified to continue permission to depart from the requirements of the adjustment as made in the Grain Case with respect to transit at Minneapolis on the prevailing 8.5-cent balance to Chicago.

The argument on behalf of complainants in No. 27580 was along much the same lines as that previously submitted and fully reported. It was limited to a request for an alternative order under section 3, but particularly with a view to obtaining transit under proportional rates from the Kansas City market. The petition on behalf of complaining interests in Nos. 27628 and 27628 (Sub-No. 1) stressed the importance of a section 3 finding that would afford transit at Kansas City, St. Joseph, and other rate-break markets, under the proportional rates from Omaha to St. Louis, Peoria, Chicago, and points taking the same rates. Upon argument the request on behalf of these interests was en- [fol. 615] larged to the full scope of the issues raised by the complaints and in the reopened general investigation.

There has been no further hearing in these proceedings. The evidence of record, therefore, is the same as that considered in our prior report on reargument of July 12, 1938. The points now made in argument for modification of the prior requirements are similar to, and in many respects the same as, those previously stressed in oral argument. Rate illustrations were presented, somewhat different from those previously submitted but to the same general effect. However, as shown by counsel for the Wichita Board of Trade, to grant the requests for transit under proportional rates from the rate-break markets would be to re-establish the so-called dual system of rates. That system has been condemned in these proceedings upon five previous occasions. It would give the rate-break markets, Kansas City and Omaha, the privilege of using a 9.5-cent transit balance to defeat the present 16-cent proportional rate to Chicago, as well as to destroy the present relation

required in rates from origins in the western district. The facts of record on this phase of the proceeding are set out in our last report on reargument, 229 I. C. C. 9, at pages 10, 11, and 12. It is not necessary to again repeat them here. Reconsideration of the record in the light of this last argument does not afford ground for modifying our previous findings.

Argument was presented on behalf of interest at Duluth to show the necessity for the hedging of coarse grains in the Minneapolis market as previously considered in connection with wheat. Attention was called to the fact that the record made early in these proceedings shows the same grounds for modification of our previous findings in connection with coarse grains at Minneapolis as was made for wheat. It was pointed out that this would require only a change in the present tariff rule "to provide not only for wheat but for * * * coarse grain". The facts of record are substantially reflected in the prior reports and will not be repeated here. Upon reconsideration of the record we conclude that our findings should be modified to permit on coarse grains from Duluth to Chicago and related gateways the same transit privileges at Minneapolis as are now afforded wheat.

In a previous report in these consolidated proceedings, Grain Case Modifications, 223 I. C. C. 235, our former findings were modified to authorize until December 1, 1938, transit at rate-break points on rates, overhead or proportional, which applied through the markets. The carriers serving the Twin Cities established proportionals from the Missouri River markets to Chicago, Ill., and related gateways, on wheat, transited at the Twin Cities and ultimately shipped to points east of the Illinois-Indiana State line, 4 cents lower than the then existing combinations of proportionals on the Twin Cities.

[fol. 616] By order of November 29, 1938, in Investigation and Suspension Docket No. 4558, Wheat and Products via Twin Cities to East, we suspended the tariff provision for expiration which would have discontinued the rate maintained under permission previously granted to depart from the requirements of the grain-rate adjustment at Minneapolis until December 1, 1938. The argument here considered differs slightly from the emphasis formerly placed upon the record in support of transit at Minneapolis with

the lower 8.5-cent rate to Chicago. As shown by our prior reports, the propriety of this exception at Minneapolis, with the then 8-cent rate beyond, as subsequently increased, was based on an emergency shown to exist at the time in the grain trade. Carriers and shippers interested in the continuation of the arrangement now urge the exception as necessary to the trade and as a basis for obtaining revenue for the carriers. The continuation of transit at a lower rate than that provided by the adjustment required by the Grain Case is opposed by North Dakota and by other shipping interests generally west of the Twin Cities, principally upon the ground that it unduly prefers the shippers having available the lower rate, to the undue prejudice of opposing shippers whose grain is handled out of Minneapolis under the same or substantially similar conditions under the higher rate required by the Grain Case. Carriers generally, other than the Minneapolis lines, also oppose the continuation of the present arrangement at Minneapolis, as an exception to the grain-rate structure required by the original proceeding, because they regard it as an entering wedge to break down the general structure and the restoring of transit balances lower than the rates required by the Grain Case.

The record, reconsidered in the light of the recent argument, affords no ground for modification of our findings of July 12, 1938, in respect to this phase of the proceedings.

Certain rate statements were submitted in the course of the argument designed to show reasons for, as well as bad results to follow, requested modification of our prior reports herein. These statements differ only slightly from rate statements previously submitted, and much of the argument varies little from that submitted on behalf of the interests of record upon the several previous occasions when these proceedings have been heard in oral argument. Certain interests desired to stipulate matters of evidence to bring the record down to date. Opposing counsel were unwilling to agree to such stipulation, and we have for reconsideration here, in the light of this argument, the same evidence as previously considered and reported.

Upon reconsideration of the record in the light of the recent argument we find that our previous findings should be, and they hereby are, modified to permit transit at Minneapolis on the proportional rates from Duluth to Chi- [fol. 617] cago and related gateways on coarse grains, as

now provided on wheat. In all other respects our findings of July 12, 1938, are affirmed.

The status quo has been maintained by the order in Investigation and Suspension Docket No. 4558, Wheat and Products via Twin Cities to East, pending reconsideration of the record upon reargument in the reopened proceedings. There appearing no justification for continuing the so-called emergency rate from Minneapolis, the order in the investigation and suspension proceeding will be vacated and set aside.

An appropriate order will be entered.

Meyer, Commissioner, dissenting in part:

I agree with the finding that coarse grains are entitled to the same services and rates as wheat moving on the proportional rate from Duluth with transit at Minneapolis. I dissent from the other findings for reasons stated in my dissent in Grain Case Modifications, 229 I. C. C. 9, 17.

Aitchison, Commissioner, dissenting in part:

I concur in the separate expression of Commissioner Meyer, which reiterates the substance of his dissent in Grain Case Modifications, 229 I. C. C. 9, 17. However, I am of the opinion that complainants in this proceeding have established that the present adjustment is unduly prejudicial to them.

In affirming the previous finding that dealers and millers at the Missouri River markets and Minneapolis are not unduly prejudiced by the denial of transit on the intermarket proportional rates, both the report now adopted and the previous report unduly emphasize the form of rate construction and the character of certain incidents of the transit involved, that is, whether under overhead rates or on inbound and outbound proportionals. The result is that the substance of the material disparity which exists is subordinated to and is excused by tariff nomenclature.

The present adjustment denies transit at these rate-break markets on indirect routes, while the adjustment permits transit, and the privilege is accorded, at adjacent and competing points on either side on the same or more circuitous routes. This appears to be a violation of section 3(1) of the act, regardless of the method of computing the rate or the form which transit may assure. No justification is suggested for this difference in treatment, other than the mere

manner of rate construction and tariff publication, which I cannot bring myself to believe constitute a dissimilarity in transportation circumstances and conditions.

[fol. 618] It does not justify the disparity to say that the rate-break markets have offsetting advantages which require us to condone or ignore otherwise unreasonable disadvantages those points are subjected to by the adjustment. The intent of the act we administer is that all unjust preferences shall be rooted out, not that they be balanced against each other and permitted to continue. If there are advantages to certain rate-break markets inherent in the rate-break system, it is because the markets are located where they are and because they enjoy the service of many competing railways. These are advantages of their location, which it is not for us to attempt to equalize by condoning other substantial inequality in treatment of those points.

The situation should be corrected, even though it may require disturbance of the existing adjustment and of the manner of rate construction and statement. But I am not convinced that such dire results would follow as seem to be anticipated.

I am authorized to say that Chairman Caskie joins in this expression.

Commissioner Splawn did not participate in the consideration and disposition of this proceeding.

[fol. 619] ORDER

Served March 17, 1939.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C. on the 13th day of March, A. D. 1939.

INVESTIGATION AND SUSPENSION DOCKET No. 4558

WHEAT AND PRODUCTS VIA TWIN CITIES TO EAST

It appearing, That by order and first supplemental order dated November 29, 1938, the Commission entered upon an investigation concerning the lawfulness of the rates, charges, regulations and practices stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until July 1, 1939;

It further appearing, That reconsideration has been given the record in the light of petitions and oral argument, and that the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the orders heretofore entered in this proceeding, suspending the operation of said schedules, be, and they are hereby, vacated and set aside as of March 31, 1939, and that this proceeding be discontinued.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 620] In United States District Court

Answer of the United States of America—Filed July 13, 1940

Answering the complaint filed against it in the above entitled cause, United States of America, defendant, says:

1. The allegations of Section I of the complaint and the sub-divisions of said section are admitted.

2. The allegations of Section II of the complaint, and the sub-divisions thereof, are admitted.

3. The allegations of Section III of the complaint are admitted.

4. The allegations of Section IV of the complaint are admitted.

5. The allegations of Section V of the complaint are denied except that United States admits that for many years prior to July 1, 1935 the applicable tariffs of the railroads transporting grain provided for the stopping of grain in [fol. 621] transit at the terminal markets and at numerous other points for the purpose of storing, cleaning, milling and manufacturing, and provided for reshipment of such grain or its products to final destination upon payment of the unpaid balance of the through rate known as the transit balance; and United States alleges in this connection that said Section V wholly fails to set forth or describe fully the rates and charges for the transportation of grain as they

existed prior to July 1, 1935, and for full and complete information with respect thereto the Court is respectfully referred to the full text of the reports and decisions of the Interstate Commerce Commission to which the complaint refers and makes a part thereof.

6. Answering Section VI of the complaint, United States admits the allegation in sub-division (A) thereof that on July 1, 1935, pursuant to hearing, argument and report, an order of the Commission became effective providing that industries and shippers handling grain and grain products at the so-called terminal markets should transit exclusively upon the basis of local rates to said markets and prescribed rates therefrom known as proportional rates, but United States denies the remaining allegations of said sub-division (A) of Section VI. Answering sub-division (B) of Section VI, and the separate paragraphs thereof, United States admits that there exists the rates set forth in the several separate paragraphs of said sub-division (B) and that said rates are applicable to transit at the designated terminal markets and at the designated interior points as mentioned in said paragraphs. But United States denies that the allegations of said sub-division (B) contain a full complete or accurate description of the facts and circumstances which the Commission weighed and considered in establishing or permitting the establishment of said rates.

7. United States admits that said rates and practices to which reference is made in Section VII of the complaint were either provided for, permitted, or required by the reports and orders of the Commission cited and described in said Section VII.

8. Answering Section VIII of the complaint United States admits that the parties mentioned in sub-divisions (A), (B) and (C) of said Section filed with the Interstate [fol. 622] Commerce Commission on the dates therein mentioned the complaints described in said Section and that the complaints contained allegations and assertions substantially as stated in said Section VIII.

9. Answering Section IX of the complaint United States admits that on July 27, 1937 the Commission issued its report and decision entitled "Grain Case Modifications" officially reported in 223 I. C. C. 235, and admits further that in said decision the Commission modified in certain

respects its previous decisions and orders in Docket No. 17,000, Part 7, Grain and Grain Products Within The Western District And For Export, but United States denies that said Section IX contains a full and complete statement of the facts and conclusions contained in said report of July 27, 1937 and for full and complete information with respect thereto the Court is respectfully referred to the full text of said report.

10. Answering Section X of the complaint United States admits that the railroad carriers failed, with one exception, to exercise the permission granted them by the Commission's said report of July 27, 1937 to grant additional transit for the limited period to December 1, 1938 and to depart temporarily from the requirement of strict adherence to the application of the proportional rates from the rate-break or terminal markets, but denies that the Commission had found that said rates and practices were unreasonable or resulted in unjust discrimination or undue prejudice and disadvantage. Answering the remaining allegations of said Section X United States admits that the parties named therein filed with the Commission, on the dates therein stated, petitions for reconsideration and rea[illegible]ument containing the assertions and prayers therein de[illegible]ibed.

11. The allegations of Section XI of the complaint are admitted.

12. The allegations of Section XII of the complaint are admitted.

13. The allegations of Section XIII of the complaint are admitted.

14. The allegations of Section XIV of the complaint are admitted.

15. Answering Section XV of the complaint United States denies that the allegations thereof contain a full complete or correct statement of the facts found and conclusions [fol. 623] reached by the Commission in the reports and orders mentioned in the complaint, and made a part thereof, and for full and complete information with respect thereto the Court is respectfully referred to the full text of said reports.

16. The allegations of Section XVI of the complaint are denied.

17. The allegations of Section XVII of the complaint are denied.

18. United States denies that this Court has jurisdiction or power to determine the issues raised by numerous allegations in the complaint and more particularly in Section XVI thereof, to the effect that the rates and practices prescribed, authorized or permitted by the Commission in connection with the transportation of grain, are in violation of Sections I, II, III, XV, or other Sections of the Interstate Commerce Act.

19. The facts set forth in the complaint are insufficient to constitute a cause of action against the United States or to entitle the complainants to the relief prayed or to any relief whatever from this Court.

20. Except as herein expressly admitted United States denies each and every allegation contained in the several Sections of the complaint and in the numerous sub-divisions thereof.

Wherefore, United States prays that the complaint be dismissed at the costs of the complainants and for such other and further relief as may be proper.

Elmer B. Collins, Special Assistant to the Attorney General. Thurman Arnold, Assistant Attorney General. Richard K. Phelps, Acting United States Attorney.

[File endorsement omitted.]

[fol. 624] In United States District Court

Answer of Interstate Commerce Commission—Filed August 1, 1940

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, saving and reserving all benefit and advantage of exception to the many errors and insufficiencies in the complaint, for answer thereto, says:

I

The Commission admits, for the purposes of this suit, the allegations in paragraph I of the complaint.

II

The Commission admits, for the purposes of this suit, the allegations contained in paragraph II of the complaint.

III

The Commission admits, for the purposes of this suit, the allegations contained in paragraph III of the complaint.

IV

The Commission admits, for the purposes of this suit, the allegations contained in paragraph IV of the complaint.

[fol. 625] V

Answering paragraph V of the complaint, the Commission admits that for many years prior to July 1, 1935—the date on which the revised grain rate structure in the Western District prescribed by the Commission became effective, as hereinafter more fully shown—the applicable tariffs of the rail carriers serving Minneapolis, Minn., Omaha, Nebr., Kansas City, Mo., Chicago, Ill., St. Louis, Mo., and other important primary grain markets in the Western District, provided for "transit" at such primary markets, under which grain was shipped to the market at the local or flat rate applicable to such a shipment, and, after storage ,merchandising, cleaning, clipping, milling, or other treatment, the grain or its product or equivalent was reshipped at the balance of the through rate from original point of shipment to the point of destination, such balance, called the "transit balance," representing the difference between the rate paid upon the inbound shipment to the market and the through rate from the point of origin of the inbound shipment to the destination of the outbound shipment. This form of transit under which the transit balance was paid upon the outbound shipment was also in effect at numerous other points that were not primary markets. It is still in effect at such other points and was and is the only form of transit available at such points. At the primary markets, however, a second and alternative form of transit was also contemporaneously in effect, under which the grain moved into the market under the local or flat inbound rate, as in the case of transit under the other method, but the outbound shipment moved under a sepa-

rately-established proportional rate which was lower than the outbound local or flat rate to the same destination. (For example, the proportional rate on wheat from Kansas City to Chicago, prior to July 1, 1935, was 17.5 cents—all rates herein stated are in cents per 100 pounds—whereas the [fol. 626] local rate on wheat between those points then in effect was 23.5 cents.) The lower proportional rate was in fact a transit rate and was applicable only upon surrender of a freight bill covering an inbound shipment by rail of the same kind of grain or its equivalent. In many instances the transit balance was lower than the outbound proportional rate and in such instances the outbound shipper was frequently able to obtain the benefit of the lower transit balance by the simple expedient of surrendering a freight bill covering an inbound shipment from a point of origin from which there was in effect a one-factor through or overhead rate to the point of destination of the outbound shipment.

This dual system of rates, under which the large terminal markets had at their command, for application on outbound shipments, both proportional rates as well as a multitude of varying transit balances lower than the outbound proportional rates, was condemned by the Commission in its reports and orders in the proceedings referred to hereinafter, for the reasons fully explained in the reports, and upon a finding, amply supported by substantial evidence, that such dual system of rates resulted in undue preference of shippers under the transit balances and undue prejudice against shippers under proportional rates higher than the transit balances, in violation of the provisions of the Interstate Commerce Act and especially section 3 (1) thereof.

The Commission's reports and orders require that the rate-break combinations of local rates in and proportional rates out must be the exclusive method of rate making on all shipments accorded transit at the primary markets and reshipped to points to which the outbound proportional rates applied, except in certain instances to meet carrier competition over another route, as fully explained hereinafter, and that one-factor or overhead through rates applicable through the primary rate-break markets, where lower than the prescribed rate-break combinations found [fol. 627] by the Commission to be reasonable, under which the shipments could be transited at such markets and reshipped at transit balances lower than the prescribed rea-

sonable outbound proportional rates, should be canceled. Such order became effective July 1, 1935, and is now in force (except as modified in one particular situation in Wheat Products from Twin Cities to Chicago, 218 I. C. C. 27, 41.)

At transit points other than primary rate-break markets, no outbound proportional rates were or are in effect, and all shipments accorded transit at such points pay the local or flat rates in and the transit balances out, with the result that all such shippers pay the same through rate from the same point of origin to the same destination, in the same manner that all shipments accorded transit at the rate-break markets pay the rate-break combinations on shipments accorded transit at such markets, which rate-break combinations are equivalent to reasonable one-factor or overhead through rates through such markets, the Commission's method of determining such rate-break combinations, as explained in its reports, having been to determine first reasonable through rates from typical or key points of origin in the grain-producing regions to the final markets, such as Chicago, St. Louis, Memphis, and then breaking them down into inbound local rates to the primary markets and proportional rates beyond. The Commission stated: "The rate-break combinations on the Missouri River markets from Kansas, Nebraska, and other western States to Chicago and St. Louis were the result of first checking in reasonable through rates from the origin key points to the final markets, over the direct routes through the Missouri River markets, and then breaking them back into inbound local rates to the latter markets and proportional rates beyond, on the basis of average relative mileages, resulting in proportional rates approximating the average transit balances that would have resulted if one-factor through [fol. 628] rates with transit, in lieu of the rate-break combinations, had been prescribed. The rate-break combinations on Minneapolis from North Dakota and other northwestern States to Chicago, over direct routes through Minneapolis, also respond to this general test. The proportional rates thus established were applicable on all grain originating back of the rate-break markets, whether requiring a short or a long haul into those markets." (Report of October 22, 1934, 205 I. C. C. 301, Exhibit 3 to complaint, at page 328.)

This system of rate-break combinations on the primary markets was prescribed for application upon the huge

volume of grain traffic from the producing origins in the western States, transported through important primary markets such as Minneapolis, Omaha, and Kansas City to large secondary markets such as Chicago, Peoria, St. Louis, and Memphis, forming, in combination with proportional or reshipping rates from the latter markets, the aggregate transportation charges to the great consuming territories in the East and Southeast. The rate-break system was also prescribed for application to various other movements including that to the Mississippi Valley, to Arkansas, Louisiana, Texas, and other sections of the Southwest, and to the Gulf ports.

The Commission denies all allegations of the complaint to the effect that it exceeded its authority, in refusing to require the carriers to grant transit at the rate-break points on both proportional rates and through rates with transit balances, and specially calls the Court's attention to the fact that, acting within the scope of its authority, and in the exercise of its administrative judgment, it found such dual system of rates to be violative of the provisions of the Interstate Commerce Act.

The Commission, while averring that the allegation is immaterial, and beyond the scope of judicial review, as it calls [fol. 629] upon the Court to decide which of two alleged inconsistent administrative rulings is correct, denies the allegation that its findings in the reports and orders referred to in the complaint, here challenged as invalid, are inconsistent with prior rulings.

VI

Answering paragraphs VI and VII of the complaint the Commission admits and alleges that by order dated December 30, 1936, it instituted an investigation for the purpose of determining whether the rates, rules, regulations and practices maintained by the rail carriers in the Western District for the transportation of grain and grain products were unjust or unreasonable, or unjustly discriminatory, or unduly perjudicial or preferential, or otherwise in violation of the provisions of the Interstate Commerce Act. The Commission undertook this investigation in response to the Joint Resolution of Congress of June 30, 1925 (43 Stat. 801; 49 U. S. C. 55), known as the Hoch-Smith Resolution, which authorized and directed the Commission "to make a thorough investigation of the rate structure of com-

mon carriers subject to the Interstate Commerce Act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist." The general investigation, designated No. 17000, Rate Structure Investigation, was divided into separate parts, each part covering a different commodity, and Part VII, Grain and Grain Products within the Western District and for Export, in connection with a large number of formal complaints and suspension proceedings, 58 in number, considered together, brought into issue all phases [fol. 630] of the grain rate structure in the Western District, embracing the entire area of the United States west of the Mississippi River (also including east bank Mississippi River points, the State of Illinois and the upper peninsula of Michigan).

Extensive hearings were held in many cities and lasted over a year, at which a great volume of evidence, consisting of upwards of 53,000 pages of testimony and of 2,100 documentary exhibits, was introduced. After the close of the hearings numerous briefs were filed by the various interested parties, including the complainants herein, an examiner's proposed report was issued, the matter was orally argued before the Commission, and, on July 1, 1930, the Commission issued its report, 164 I. C. C. 619 (Exhibit 1 to complaint), in which a general readjustment deemed by the Commission to be reasonable and nondiscriminatory was prescribed.

On April 13, 1931, the Commission issued a supplemental report in said proceeding, 173 I. C. C. 511 (Exhibit 2 to complaint), modifying and supplementing in certain particulars the original report and order, and providing that the order as thus modified should become effective on June 1, 1931.

Shortly thereafter the respondent carriers instituted suit to enjoin said order. The Supreme Court, in Atchison, etc., Ry. Co. v. U. S., 284 U. S. 248, held the order to be invalid on the ground that the Commission's denial of the carriers'

petitions for rehearing, which alleged that the prescribed rates would reduce their revenues $20,000,000 annually and that the conditions had changed since the close of the hearings, amounted to a denial of a full hearing.

By orders dated February 8, 1932 and April 8, 1932, the Commission reopened the proceedings for rehearing upon all issues involved and during April, May, July, August and November, 1932, and January, February, March, April, July, August, September and October, 1933, held further extensive hearings at various places throughout [fol. 631] the country, at which approximately 37,000 additional pages of testimony and 1,105 additional exhibits were received. Thereafter, briefs were filed by various interested parties, including complainants herein, and on February 7, 8, 9, 10, 12, 13, 14, 15 and 16, 1934, the proceedings were reargued orally before the Commission.

On October 22, 1934, the Commission issued its report on further hearing, 205 I. C. C. 301 (Exhibit 3 to complaint), in which it affirmed many of the findings of its original report of July 1, 1930, 164 I. C. C. 619 (Exhibit 1 to complaint) and of its supplemental report of April 13, 1931, 173 I. C. C. 511 (Exhibit 2 to complaint).

The aforesaid reports (aggregating 444 printed pages) deal comprehensively with the rates and rate relations, the rules, regulations and practices affecting said rates, and the transit rules, regulations and practices under said rates, for the interstate transportation of grain and grain products by rail carriers throughout the Western District, and embrace more than three score of major issues, affecting every part of a vast territory. The complaint to this Court relates to one important phase of the general subject, and, in connection with the issues raised in the complaint, the Commission respectfully invites the Court's attention to the discussion on pages 631-645 of the original report, 164 I. C. C. 619 (Exhibit 1 to complaint), under the following headings:

General survey of rate relations required,
Wheat crop and trend of movement,
Methods of rate making,
The rate-break plan,
Origin of proportional rates,
Rate-break equalization of routes,
Wide use of transit balances,

Objections to the rate break,
Proponents of proportional rates,
Cash and futures markets,
Deliveries under futures contracts,
Effect of transit balance on futures market,
Effect of futures market on cash price,
Rate to first market apparently most important to producer,
[fol. 632] Rate break preserves carriers' revenues,
As to propriety of both proportional rates and transit balances,
Transit balance at primary markets a disorganizer of rates,
Application of proportional rates required from primary markets,
Exceptions to permit carrier competition.

The manner of the construction of the rate-break combinations, the territories of origin and destination between which such rate-break combinations were to apply and explanation of some of the important aspects of the prescribed revision appear on pages 660 to 665 of the original report, under the headings set out below, to which the attention of the Court is also respectfully invited:

Readjustment of rates made,
Reasonable through rate first determined, then broken back into rate-break components,
Some general results of the revision.

Special attention is invited to pages 633-634 of the report which, under the heading "Methods of rate making," define the terms "flat rate," "proportional rates," "transit balances," and other terms as used throughout that report and subsequent reports, and as used herein.

The term "primary markets" as used in the aforesaid reports is synonymous with the term "terminal markets" as used in the complaint to this Court. As shown in the original report, 164 I. C. C. 619, particularly at page 632, the primary markets are the cities at which the complainants before this Court are located, namely, Kansas City, Mo., St. Louis, Mo., Minneapolis, Minn., Omaha, Nebr., St. Joseph, Mo., Leavenworth, Kans., and Atchison, Kans., as well as Sioux City, Council Bluffs, Duluth, Peoria, Chicago, Milwaukee, and certain other important markets for grain.

The general plan of the rate adjustment contemplated by the original report, which was readopted in the report upon rehearing, 205 I. C. C. 301, and subsequently put into effect, was the prescription of (a) specific local or flat rates from selected origins, or key points, in the various [fol. 633] grain-producing areas for the West to the primary markets, including Duluth, Minneapolis, Sioux City, Omaha, St. Joseph, Atchison, Leavenworth and Kansas City; (b) proportional rates for the rate-break markets to final markets, including Chicago, Peoria, Cairo, St. Louis and Memphis, and other destinations, including ports of export; (c) through rates equal to the rate-break combinations; and (d) specific rates from key points to destinations other than the rate-break markets, not affected by the rate-break combinations, including ports of export, with directions to the carriers to readjust rates between points not specifically mentioned in the findings in reasonable relation to the rates specifically prescribed.

For example, the prescribed local or flat rate from Holdrege, Nebr., a selected key point, to Omaha was 16.5 cents, and the prescribed proportional rate from Omaha to Chicago was 15 cents. The prescribed through rate from Holdrege to Chicago was 31.5 cents, equal to the rate-break combination of the local or flat rate from Holdrege to Omaha of 16.5 cents and the proportional rate from Omaha to Chicago of 15 cents.

The proportional rates from the rate-break markets as prescribed were lower than the local rates from those markets which remained in effect, and on transited shipments were applicable only upon surrender of freight bills, which had been previously registered with the carriers' transit bureau, covering inbound rail transportation of tonnage equivalent in kind or its products to that of the outbound shipment.

In the report on further hearing, 205 I. C. C. 301, the prescribed proportional rates are set out at page 486 and the flat rates into the markets and between other points at pages 487 to 510, inclusive. Some of the rates there shown were modified in the supplemental report, 215 I. C. C. 83, as summarized on pages 125-128 thereof. Since the [fol. 634] issuance of those reports, the prescribed rates have been subjected to the increases authorized by the Commission in March, 1938, in Fifteen Percent Case, 1937-1938, 226 I. C. C. 41 and 226 I. C. C. 746, viz., increases

of one-quarter cent in rates of 5 cents and less; one-half cent in rates of more than 5 cents but not more than 10 cents; and 5 per cent of other rates, resolving fractions to the nearest whole cent.

In the report upon rehearing, 205 I. C. C. 301, at page 342, the Commission affirmed the finding in the original report, at page 645, "that the rate-break combinations must be the exclusive basis of charge on shipments through the rate-break markets", subject to exceptions to meet carrier competition. The findings in the original report concerning such exceptions to meet carrier competition were also affirmed. Such exceptions were made in respect of shipments through a rate-break market to meet the carrier competition of a lower-rated route, provided the shipments were not stopped at the rate-break market or other intermediate point on the equalized route, the rate-break combination to apply on shipments stopped in transit on that route. This finding was explained in the supplemental report, 173 I. C. C. 511 (Exhibit 2 to complaint) at pp. 515-517, of which the following is an excerpt: "But transit may be permitted at an intermediate point other than the market, and not at the market, on the higher route when the intermediate transit point on the higher route is also a transit point on the direct route. For example, transit may be permitted at Fort Dodge, Iowa, but not at Omaha, on a shipment from Sioux City to Chicago, through Omaha and Fort Dodge, to meet the competition of a direct route from Sioux City through Fort Dodge to Chicago, with transit at Fort Dodge; or at Mankato, but not at Omaha or Sioux City, on the route from Kansas City to Minneapolis, through Omaha, Sioux City and Mankato, to meet the competition of a direct [fol. 635] route from Kansas City, through Des Moines and Mankato, with transit at Mankato; or at Cedar Rapids, but not at Omaha, on the route from Kansas City, through Omaha and Cedar Rapids to Chicago, to meet the competition of a direct route from Kansas City through Cedar Rapids to Chicago, with transit at Cedar Rapids."

In this connection the attention of the Court is respectfully invited to the discussion in said report on further hearing, 205 I. C. C. 301 (Exhibit 3 to complaint) on pp. 328-342, under the headings:

Construction of rate-break combinations,
Rate-break combinations over indirect routes,

Northbound rate-break combinations to Duluth,

Rate-break combinations on Kansas City from the Southwest to St. Louis and Chicago,

Rate-break combinations from northern Kansas and from Colorado to Memphis and the Southwest,

Transit balances versus proportional rates,

Adjustments alleged to require application of transit balances,

Proportional rate advantages,

Rule for exclusive application of rate-break combinations represcribed,

Exceptions to meet carrier competition.

A general discussion of the rate-break adjustment appears on pages 370 to 403, both inclusive. The discussion on pages 370 to 380 is devoted to the inbound flat rates to the primary, rate-break markets; that on pages 380 to 403, inclusive, deals with the outbound proportional rates from such markets. The attention of the Court is respectfully invited to that discussion, also to the "General Findings" appearing on page 472.

The effective date of the order issued with said report of October 22, 1934, was April 1, 1935. By subsequent orders this effective date was postponed to July 1, 1935, on which date the general readjustment prescribed by the Commission became effective.

On March 4, 1936, the Commission issued a "Supplemental Report on Further Consideration of the Record on Further Hearing," 215 I. C. C. 83 (Exhibit 4 to complaint), for the purpose of clarification and modification [fol. 636] of the report on further hearing (205 I. C. C. 301; Exhibit 3 to complaint), and for the correction of certain typographical errors. The attention of the Court is especially invited to the discussion in that report on pages 87-93 under the headings "Clarification as to application of rate-break combinations," and "Findings as to transit at interior points on routes through rate-break markets modified." The conclusions reached upon this last subject were as follows, page 93:

"In view of the foregoing considerations, the previous findings and orders are modified to permit of transit, in the discretion of the carriers, at interior transit points on a route through a rate-break market, as those points are hereinbefore defined, on the basis of a lower rate in effect

over a competing route between the same points, in order to equalize those points with transit points on the cheaper route, regardless of whether the interior transit points on the equalized route be also transit points on the cheaper route. On all shipments stopped in transit at the rate-break market on the higher-rated route the rate-break combinations will apply. On shipments not stopped in transit at any point on that route the equalization with the cheaper route may be permitted, in accordance with the previous findings."

VII

Further answering paragraphs VI and VII of the complaint the Commission admits and alleges that in its aforesaid reports and orders it prescribed a system of "rate-break combinations" for uniform application on grain traffic to and from the primary grain markets. Under this system of rates the traffic moves from grain-producing areas in the West to the primary markets on separately-established local rates, prescribed by the Commission as reasonable, and from such markets on separately-established proportional rates, also prescribed by the Commission as reasonable. Under this rate-break system the primary markets are accorded full and liberal transit privileges. The proportional rates from the market are substantially lower than the local rates which would apply in the absence of the proportional rates. Such proportional rates lower than the normal local rates are granted in considera- [fol. 637] tion of the fact that there has been a prior rail movement into the market, and they may be applied only where the shipper from the market surrenders, at the time of the outbound shipment, a freight bill covering an inbound shipment of a like kind of grain, or its equivalent, that has moved into the market by rail. But there is no requirement that the outbound shipment move over the line of the same rail carrier that brought the grain into the market, nor that the outbound shipment move in the same direction as the inbound shipment; e. g., an outbound shipment destined to an eastern point may be accorded the reduced proportional rate upon surrender of a freight bill covering any inbound shipment that has moved into the market from the West, North, South, or East, over any rail route.

The aforesaid reports and orders further require that such rate-break combinations should be the exclusive method of rate-making on grain shipped to the primary markets, there merchandised, treated or milled, and the grain or grain product subsequently shipped to the points of destination to which the proportional rates apply, and that all tariff regulations providing for the application of one-factor rates through the primary markets, with transit privileges at the market, under which a local rate would be applied upon the inbound shipment and the "transit balance," representing the difference between the inbound local rate and the one-factor through rate, would be applied upon the outbound shipment, should be canceled, in order to cure the evils resulting from the dual system of rates to and from the primary markets, previously in effect, under which outbound shipments from the markets moved under varying and discriminatory bases of charge owning to the fact that the outbound traffic moved under proportional rates in some instances and varying transit balances lower than the proportional rates in other instances, even though contemporaneous shipments moved over the same route to the same destination, as fully explained in the Commission's reports.

[fol. 638] One exception was made to the requirement for the exclusive application of the rate-break combinations through the primary markets: Where a primary market was located on an indirect route from another primary market, the carriers whose lines formed the indirect route were authorized to apply the prescribed proportional rate over such route instead of the rate-break combination to and from the intermediate market. This exception may be fully illustrated by reference to a single situation:

The prescribed proportional rate from Omaha to Chicago was 15 cents. (This rate has subsequently been increased, with the Commission's authorization, to 16 cents.) Exhibits of record before the Commission show that there are at least 21 established rail routes between Omaha and Chicago. These routes vary in length from 479.8 miles to 799.1 miles. Some of these routes are viewed as direct routes, such as the single-line routes of the Chicago & North Western Railway, 487.7 miles, the Chicago, Milwaukee, St. Paul & Pacific Railroad, 487.4 miles, the Chicago, Rock Island & Pacific Railway, 502.7 miles, the Chicago, Burlington & Quincy Railroad, 501 miles, the Chicago Great West-

ern Railroad, 508.2 miles, the Illinois Central Railroad, 519.2 miles, and the joint-line routes of the Chicago Great Western from Omaha to Carroll, Ia., and the Chicago & North Western from Carroll to Chicago, 479.8 miles; Chicago Great Western, Sycamore, Ill., and Chicago & North Western, 511.7 miles. Others are deemed indirect, such as the single-line route of the Wabash Railway Company through Brunswick, Mo., Hannibal, Mo., and Decatur, Ill., 652.4 miles, and the joint-line routes of the Chicago Great Western, Minneapolis & St. Louis Railroad and Chicago Great Western, through Moorland and Des Moines, Ia., 584.3 miles; Missouri Pacific Railroad from Omaha to Kansas City and Chicago Great Western Kansas City to Chicago, 799.1 miles.

[fol. 639] Many of these indirect routes from Omaha to Chicago pass through other primary markets, including Kansas City, Mo., St. Joseph, Mo., and Leavenworth, Kans., such as routes formed by the Chicago, Burlington & Quincy from Omaha to Kansas City and the Alton Railroad, the Atchison, Topeka & Santa Fe Railway or the Chicago Great Western beyond and routes formed by the Missouri Pacific Railroad from Omaha to Kansas City or St. Joseph or Leavenworth and the Alton, the Atchison, Topeka & Santa Fe, Chicago Great Western or the Wabash beyond.

The prescribed proportional rate of 15 cents from Omaha to Chicago applies over all these routes, including those which pass en route through other rate-break points such as St. Joseph, Leavenworth and Kansas City, and in such instances it is not required that the rate-break combination to and from such intermediate primary markets be applied. The purpose in permitting the lines forming these indirect routes to apply the Omaha-Chicago proportional rates over their routes was merely to permit such carriers to meet the competition of the carriers forming the direct routes. A huge grain traffic moves eastward from Omaha and unless the lines forming the indirect routes are permitted to establish the same rate as applies over the direct routes they would be unable to obtain any substantial part of the traffic. The authorization to the indirect-route carriers to meet this carrier competition was coupled with the requirement that the shipments must not be stopped en route for transit at any intermediate primary market for, if this were permitted, the traffic from the intermediate primary market would move at a transit balance lower

than the proportional rate applying from that market, and discrimination would be created. The prescribed proportional rate from Kansas City to Chicago was the same as [fol. 640] from Omaha to Chicago, 15 cents; and the prescribed proportional rate from Omaha to Kansas City was 6 cents. If transit were permitted at Kansas City, for example, on the Omaha-Chicago proportional rate of 15 cents, applied over an indirect route through Kansas City, the traffic would move from Omaha to Kansas City at the proportional rate of 6 cents and would move out from Kansas City to Chicago at the transit balance of 9 cents and would thus defeat the 15-cent proportional rate applicable from Kansas City.

Transit privileges are and for many years have been accorded at numerous interior points other than rate-break markets. The Commission's reports and orders do not withdraw the transit privileges from these interior points, and they are now in effect. These transit privileges are, however, of a different form and are much more restricted than those accorded the primary rate-break markets. They are very greatly restricted by the fact that they apply only under one-factor through rates which under routing regulations specified in the tariffs apply over routes passing through the transit point; and in all instances the outbound shipment must move over the line of the rail carrier that transported the inbound shipment into the transit point, otherwise a combination of separate rates to and from the transit point, higher than the one-factor through rate, is lawfully applicable. In all instances the local inbound rate from the point of origin to the transit point is collected at the time of the inbound shipment, and, since no reduced, proportional rates apply from such transit points, the outbound shipment in each instance moves at the transit balance. For example, if a shipment of grain originating at Holdrege, Nebr., is transited at Davenport, Iowa, and reshipped to Chicago, the inbound shipment would pay the regular inbound local rate of 29.5 cents to Davenport and [fol. 641] the outbound shipment would pay the transit balance of 2 cents, or a total of 31.5 cents, which is the one-factor through rate from Holdrege to Chicago, equivalent to the rate-break combination on Omaha of 16.5 cents to Omaha plus the proportional rate of 15 cents from Omaha to Chicago. (The rates here stated are those prescribed by

the Commission effective July 1, 1935, which rates have since been increased 5 per cent.)

Many of the interior transit points are located on both direct and indirect routes between primary markets, and the carriers forming the direct routes as well as those forming the indirect routes grant transit at such points, to the end that the rates over all such routes on shipments transited at intermediate interior points will be equal. As shown above, some of these indirect routes pass through primary markets, others do not, but in either event the restricted form of transit applicable at all interior points is granted, in order to avoid undue prejudice and discrimination. Under such restricted form of transit, the transit balance must be paid upon each outbound shipment, whether such balance is high or low, there being no proportional rates which might be availed of if they were lower in particular instances than the transit balance, whereas the proportional rates applicable from the primary markets, under which those markets are granted liberal transit privileges unrestricted as to routes and unrestricted in many other respects, represent the average of transit balances of reasonable one-factor rates which were broken down into rate-break combinations applicable to and from such markets and prescribed by the Commission in the light of a comprehensive record and after mature deliberation, with the requirement that such outbound proportional rates must be applied upon all outbound shipments transited at such [fol. 642] markets, whether such proportional rates were higher or lower than the transit balances under one-factor rates in particular instances. The Commission alleges that the payment of the prescribed, a reasonable proportional rate from a primary market which happens in a particular instance to be higher than a transit balance under a proportional rate from another primary market, applied through the intermediate market over an indirect route in order to meet carrier competition, does not subject such intermediate primary market to any legal injury or damage.

VIII

Answering paragraph VIII of the complaint the Commission admits that subsequent to the date of the report of March 4, 1936 (215 I. C. C. 83, Exhibit 4 to complaint), formal complaints were filed as alleged in said paragraph, to wit: The Board of Trade of Kansas City, Mo., filed

complaint dated January 29, 1937, which complaint was docketed by the Commission as No. 27628 (Exhibit 5 to complaint). The Omaha Grain Exchange filed complaint dated February 2, 1937, which was docketed by the Commission as No. 27628, Sub. No. 1 (Exhibit 7 to complaint). The Atkinson Milling Company and other flour milling companies located at Atchison and Leavenworth, Kans., Kansas City and St. Joseph, Mo., Minneapolis and St. Paul, Minn., and Omaha, Nebr., filed joint complaint dated October 26, 1936, which was docketed by the Commission as No. 27580 (Exhibit 6 to complaint). While differing slightly as to scope, these complaints had a common purpose, namely, each sought a modification of the portion of the Commission's findings and orders in the aforesaid reports in the general grain case, 164 I. C. C. 619, 173 I. C. C. 511, 205 I. C. C. 301, and 215 I. C. C. 83 (Exs. 1, 2, 3 and 4 to complaint), which required the exclusive use of propor-
[fol. 643] tional rates from points from which such rates are applicable as the outbound basis of charge on shipments transited at such points. Complainants in No. 27580 sought transit on intermarket proportionals only, whereas complainants in No. 27628 and Sub. No. 1 thereto sought transit on all rates applying via their markets, both intermarket proportionals and overhead through rates.

Numerous interested parties intervened in said proceedings both in support of and in opposition to the relief sought and some of them introduced testimony in support of their positions. The interveners in No. 27628 and No. 27628, Sub. No. 1 (which were consolidated, and which are hereinafter referred to collectively as No. 27628), were as follows:

Omaha Grain Exchange, Omaha, Nebr.,
Sioux City Grain Exchange, Sioux City, Iowa,
St. Joseph Grain Exchange, St. Joseph, Mo.,
Board of Trade of the City of Chicago, Ill.,
Amarillo, Texas, Grain Exchange,
Panhandle Grain Dealers Association, Amarillo, Tex.,
Duluth, Minnesota, Board of Trade,
Tex-O-Kan Flour Mills Company, Dallas, Tex.,
Shellabarger Mill and Elevator Company, Salina, Kans.,
Mid-Kansas Milling Company, Clay Center, Kans.,
Topeka Chamber of Commerce, Topeka, Kans.,
Hutchinson Board of Trade Association, Hutchinson, Kans.,

Central Missouri Millers Club, including flour millers at Boonville, California, Chamois, Concordia, Higginsville, Jefferson City, Marshall, Mexico, New Haven, Salisbury, Sedalia, and Slater, Mo.,

Eisenmayer Milling Co., Springfield, Mo.,

M. F. A. Milling Co., Springfield, Mo.,

Tindle Milling Co., Springfield, Mo.,

Lipscomb Grain & Seed Co., Springfield, Mo.,

Scott County Milling Company, Sikeston, Mo.,

Southeast Missouri Elevator Company, Sikeston, Mo.,

Holloway Cotton and Grain Company, Charleston, Mo.,

Malden Grain Company, Malden, Mo.,

Stoddard County Milling Company, Advance, Mo.,

Giessing Milling Company, Farmington, Mo.,

Fredericktown Milling Company, Fredericktown, Mo.,

Cape County Milling Company, Jackson, Mo.,

State of North Dakota doing business as the North Dakota Mill & Elevator Association,

North Dakota Terminal Exchange,

Greater Grand Forks Traffic Association,

Wichita Board of Trade, Wichita, Kans.,

Peoria, Illinois, Board of Trade,

Southern Kansas Millers Club,

Southwestern Millers' League,

Nebraska State Railway Commission,

Minneapolis, Minnesota, Traffic Association,

[fol. 644] Board of Railroad Commissioners of the State of Montana,

Farmers Grain Dealers Association of North Dakota,

Board of Railroad Commissioners of the State of North Dakota,

Pillsbury Flour Mills Company, Minneapolis, Minn.,

Texas Industrial Traffic League,

Corporation Commission of the State of Oklahoma,

State Corporation Commission of Kansas,

Fort Worth Grain and Cotton Exchange,

Waggoner-Gates Milling Company, Independence, Mo.,

Board of Railroad Commissioners of the State of South Dakota,

North Dakota Division of the Farmers' Educational and Co-operative Union of America,

New Orleans Joint Traffic Bureau,

Millers and Grain Dealers Association of Kansas.

The interveners in No. 27580 were as follows:

Omaha Grain Exchange, Omaha Nebr.,
Sioux City Grain Exchange, Sioux City, Iowa,
St. Joseph Grain Exchange, St. Joseph, Mo.,
Board of Trade of the City of Chicago, Ill.,
Amarillo, Texas, Grain Exchange,
Duluth, Minnesota, Board of Trade,
Tex-O-Kan Flour Mills Company, Dallas, Tex.,
Shellabarger Mill and Elevator Company, Salina, Kans.,
Mid-Kansas Milling Company, Clay Center, Kans.,
Topeka Chamber of Commerce, Topeka, Kans.,
Hutchinson Board of Trade Association, Hutchinson, Kans.,
Central Missouri Millers Club, including flour millers at Boonville, California, Chamois, Concordia, Higginsville, Jefferson City, Marshall, Mexico, New Haven, Salisbury, Sedalia, and Slater, Mo.,
Panhandle Grain Dealers Association, Amarillo, Tex.,
Eisenmayer Milling Co., Springfield, Mo.,
M. F. A. Milling Co., Springfield, Mo.,
Tindle Milling Co., Springfield, Mo.,
Lipscomb Grain & Seed Co., Springfield, Mo.,
Scott County Milling Company, Sikeston, Mo.,
Southeast Missouri Elevator Company, Sikeston, Mo.,
Holloway Cotton and Grain Company, Charleston, Mo.,
Malden Grain Company, Malden, Mo.,
Stoddard County Milling Company, Advance, Mo.,
Giessing Milling Company, Farmington, Mo.,
Fredericktown Milling Company, Fredericktown, Mo.,
Cape County Milling Company, Jackson, Mo.,
State of North Dakota doing business as the North Dakota Mill & Elevator Association,
North Dakota Terminal Exchange,
Greater Grand Forks Traffic Association,
Wichita Board of Trade, Wichita, Kans.,
Peoria, Illinois, Board of Trade,
Southern Kansas Millers Club,
Southwestern Millers' League,
Nebraska State Railway Commission,
Minneapolis, Minnesota, Traffic Association
Board of Railroad Commissioners of the State of Montana,
Farmers Grain Dealers Association of North Dakota,

Board of Railroad Commissioners of the State of North Dakota,
[fol. 645] Pillsbury Flour Mills Company, Minneapolis, Minn.,
Texas Industrial Traffic League,
Corporation Commission of the State of Oklahoma,
State Corporation Commission of Kansas,
Fort Worth Grain and Cotton Exchange,
Waggoner-Gates Milling Company, Independence, Mo.,
Board of Railroad Commissioners of the State of South Dakota,
North Dakota Division of the Farmers' Educational and Co-operative Union of America,
New Orleans Joint Traffic Bureau,
Millers and Grain Dealers Association of Kansas,
Robinson Milling Company, Salina, Kans.,
Western Star Mill Company, Salina, Kans.,
Weber Flour Mills Company, Salina, Kans.,
H. D. Lee Flour Mills Company, Salina, Kans.,
Abilene Flour Mills Company, Salina, Kans.,
Security Flour Mills Company, Abilene, Kans.,
Ismert-Hincke Milling Company, Kansas City, Mo.,
Midland Flour Milling Company, Kansas City, Mo.,
Rodney Milling Company, Kansas City, Mo.,
Black Brothers Flour Mills, Wymore and Beatrice, Nebr.,
Board of Trade of Kansas City, Missouri,
Crete Mills, Crete, Nebr.,
Merchants Exchange of St. Louis,
Southern Minnesota Mills, Minneapolis, Minn.,
Gooch Milling & Elevator Company, Lincoln, Nebr.

Hearings were held in No. 27580 at Chicago, Ill., beginning January 5, 1937 and ending January 16, 1937. Testimony filling 2,453 typewritten pages was introduced supplemented by 49 documentary exhibits.

In February and March, 1937, briefs were submitted by the complainants, and also by various interveners including the Hutchinson Board of Trade Association, the Wichita Board of Trade, the Southern Kansas Millers Club, the Topeka Chamber of Commerce, the Farmers Grain Dealers' Association of North Dakota, Farmers' Educational and Co-operative Union of America, North Dakota Division, Board of Railroad Commissioners of the State of North Dakota and the Central Missouri Millers Club.

Hearings were held in No. 27628 at Kansas City, Mo., and Washington, D. C., beginning March 3, 1937 and ending on April 6, 1937. There were introduced at these hearings 4,626 pages of testimony and 203 documentary exhibits. During May and June, 1937, briefs were filed on behalf of the complainants, and also on behalf of various [fol. 646] interveners including Board of Railroad Commissioners of the State of North Dakota, Hutchinson Board of Trade Association, Wichita Board of Trade, Southern Kansas Millers Club, Corporation Commission of Oklahoma, Board of Trade of the City of Chicago, North Dakota State Mill & Elevator, North Dakota Terminal Exchange, Greater Grand Forks Traffic Association, Farmers' Educational and Co-operative Union of America, North Dakota Division, Farmers Grain Dealers' Association of North Dakota, Board of Railroad Commissioners of the State of North Dakota, Texas Industrial Traffic League, Amarillo Grain Exchange, Fort Worth Grain & Cotton Exchange, Montana Flour Mills, Merchants Exchange of St. Louis, Sioux City Grain Exchange, Central Missouri Millers Club, Topeka Chamber of Commerce, St. Joseph Grain Exchange, Board of Trade of Kansas City, Mo., Duluth Board of Trade and Minneapolis Traffic Association.

Oral argument in Nos. 27580 and 27628 was submitted to the Commission at Washington beginning June 9, 1937, and lasting two full days.

[fol. 647] IX

Answering paragraph IX of the complaint the Commission admits and alleges that on July 27, 1937, it issued its report in Nos. 27580 and 27628, 223 I. C. C. 235 (Exhibit 8 to complaint), containing its findings of fact, conclusions, requirements, and decisions in said proceedings. Said report also modified certain of the findings and requirements in previous reports in the general grain case. The report is entitled Grain Case Modifications and is in fact a supplemental report in No. 17000, Rate Structure Investigation, Part VII, as well as the report in Nos. 27580 and 27628. With said report the Commission issued an order modifying the findings and orders previously entered in No. 17000, Part VII, so as to permit the establishment and maintenance of tariffs authorizing three free stops in transit in lieu of the maximum of two free stops in transit previously approved, and further authorizing until De-

cember 1, 1938, temporary departures from the exclusive application of the rate-break combinations at proportional rate points.

The Commission denies that paragraph IX of the complaint contains a full and accurate statement of the findings and conclusions in said report (223 I. C. C. 235, Exhibit 8 to complaint), and the Commission respectfully refers the Court to the report itself for full, true and accurate information as to the contents thereof.

X

Answering paragraph X of the bill of complaint the Commission admits that after issuance of the last-mentioned report and order (Exhibit 8 to complaint) the Board of Trade of Kansas City, Mo., Memphis Merchants Exchange, St. Joseph Grain Exchange and Merchants Exchange of St. Louis filed in Nos. 17000, Part VII, 27580 and 27628 a "Petition for Reconsideration and Reargument [fol. 648] and for Formal Findings and a Mandatory Order," dated April 8, 1938 (Exhibit 9 to complaint), that the Atkinson Milling Company and other complainants in No. 27580 filed a "Petition for Reconsideration and Reargument," dated April 12, 1938 (Exhibit 10 to complaint); and that the Omaha Grain Exchange filed a petition "For Reconsideration, Reargument and Modification of Order Decided July 27, 1937," dated April 14, 1938. These petitions alleged, in general, that the carriers had not utilized the permission granted in the Commission's report of July 27, 1937, 223 I. C. C. 235 (Exhibit 8 to complaint), to depart temporarily until December 1, 1938, from the requirement of strict adherence to the application of the proportional rates from the rate-break markets, and asked the Commission to enter a mandatory order requiring such departure. Replies to said petition were filed by the respondent carriers, Wichita Board of Trade, Hutchinson Board of Trade Association, Board of Railroad Commissioners of the State of Montana, and Montana Flour Mills Company.

By order dated May 3, 1938, the Commission assigned these various petitions for oral argument May 17, 1938. Oral argument was heard on the latter date and on May 18, 1938.

The State Corporation Commission of Kansas, by petition dated August 21, 1937, asked the Commission to reopen

the proceedings for the purpose of reconsidering the record and modifying the findings made in its report of July 27, 1937, or for the purpose of taking additional testimony or allowing reargument and giving reconsideration to that part of the report and order which authorized, temporarily, departures from the exclusive rate-break system. By petition dated September 3, 1937, the Hutchinson Board of Trade Association, Shellabarger Mill & Elevator Company and the Wichita Board of Trade asked the Commission to rescind that part of its report and order of July 27, 1937, that authorized certain departures from the exclusive ap- [fol. 649] plication of proportional rates from rate-break points. The Montana Flour Mills filed a petition dated September 11, 1937, containing the same request. The Board of Railroad Commissioners of the State of Montana filed petition dated September 13, 1937, objecting to the dual system of proportional rates and transit balances from primary markets. By order dated October 4, 1937, the Commission denied the last-mentioned petitions.

XI

Answering paragraph XI of the complaint the Commission admits that on July 12, 1938, it issued its report on reargument 229 I. C. C. 9 (Exhibit 12 to complaint), in which, for the reasons stated therein, it denied the relief sought under the aforementioned petitions for reconsideration, reargument, etc., and denied complainants' request for an affirmative finding of undue prejudice to rate-break markets on indirect routes because of lack of transit on rates less than the rate-break combinations over those routes, and permitted to expire as of December 1, 1938, the temporary unutilized permission given in the previous report to the carriers to grant such transit to meet emergency conditions. The Commission found, among other things, "that the present adjustment of rates on grain and grain products throughout the western district does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage; that the rate-break markets and interior transit points on all routes are merely accorded the benefit of their respective forms of transit, each without interference from the other; that cancelation of the transit in question at points other

than the rate-break markets on indirect routes would unduly prejudice such points and unduly prefer interior tran-
[fol. 650] sit points subject to the same form of transit on other routes; that an order requiring transit at rate-break markets on indirect routes on the basis requested, under section one, is not warranted either under our general policy as to such transit or upon the facts attendant upon the transportation of grain and grain products; that the granting of the transit requested would break down the rate-break adjustment prescribed in the Grain Case."

With said report the Commission issued an order of the same date (part of Exhibit 12 to complaint) dismissing the complaints in Nos. 27580 and 27628.

The Commission respectfully refers the Court to said report and order for full, accurate and complete information as to the contents thereof.

XII

Answering paragraph XII of the complaint the Commission admits and alleges that on October 8, 1938, October 5, 1938 and November 4, 1938, Board of Trade of Kansas City, Mo., St. Joseph Grain Exchange, Atkinson Milling Company et al., and Omaha Grain Exchange filed petitions for reconsideration, reargument and for modification in part of the Commission's reports and orders of July 27, 1937, 223 I. C. C. 235 (Exhibit 8 to complaint) and July 12, 1938, 229 I. C. C. 9 (Exhibit 12 to complaint), copies of which petitions are attached to the complaint as Exhibits 13, 14 and 15, respectively.

Replies to such petitions, opposing the granting thereof, were filed by the Farmers Educational and Cooperative Union of America, North Dakota Division, dated October 11, 1938, Board of Railroad Commissioners of the State of North Dakota, dated October 11, 1938, Hutchinson Board of Trade Association, Shellabarger Mill & Elevator Com-
[fol. 651] pany and Wichita Board of Trade, dated October 22, 1938, Missouri Millers Association, dated October 19, 1938, Kansas State Corporation Commission, dated October 24, 1938, Board of Trade of the City of Chicago, dated October 27, 1938.

By order dated December 5, 1938, the Commission reopened said proceedings for reconsideration and reargument. The proceedings were comprehensively re-presented

in oral argument lasting two full days, February 1 and 2, 1939.

XIII

Answering paragraph XIII of the complaint the Commission admits and alleges that on March 13, 1939, it issued its further report on reargument, 231 I. C. C. 793 (Exhibit 16 to complaint), finding that "Reconsideration of the record in the light of this last argument does not afford ground for modifying our previous findings." The Commission respectfully refers the Court to said report itself for full, accurate and complete information as to its contents.

XIV

Answering paragraph XIV of the complaint the Commission admits the allegations contained therein.

XV

Answering paragraph XV of the complaint the Commission denies that said paragraph contains a full, accurate and complete statement of its holdings as contained in the various reports referred to above, and the Commission respectfully refers the Court to the reports themselves, and the orders issued therewith, for full, true and accurate information as to their contents.

[fol. 652] XVI

The Commission denies the allegations in paragraph XVI of the complaint and denies that its reports and orders referred to therein are void for any of the reasons stated therein.

Further answering said paragraph XVI the Commission alleges that the Court is without jurisdiction to determine the allegations in said paragraph, and certain similar allegations in other parts of the complaint, to the effect that the rates and practices prescribed, required, authorized or approved by the Commission are unreasonable, in violation of section 1(5), or unjustly discriminatory, in violation of section 2, or unduly prejudicial in violation of section 3, of the Interstate Commerce Act.

XVII

The Commission denies the allegations in paragraph XVII of the complaint.

XVIII

Further answering paragraphs VII to XVII, both inclusive, of the complaint, the Commission alleges that in the proceedings in which the aforesaid reports and orders were made and entered the parties thereto, including the complainants herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of complainants by their counsel; that in briefs filed in said proceedings and in oral argument questions relating to said matters were fully argued and submitted to the Commission for determination on behalf [fol. 653] of said parties by their respective counsel, including questions raised by complainants in this suit, and the Commission determined said matters and entered and served upon the complainants and other interested parties its said reports and orders; that said reports and orders include the Commission's findings of fact, decisions, conclusions and requirements in the premises, and that, upon the evidence aforesaid, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports support the orders here in question and that said findings and conclusions were and are, and each of them was and is, fully supported and justified by the evidence submitted to it in said proceedings as aforesaid.

The Commission further alleges that in making said orders it considered and weighed carefully each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the complaint herein.

The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred

upon it, and the Commission denies each of and all the allegations to the contrary contained in said complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint insofar as they conflict either with the allegations herein or with the statements, findings, determinations, or conclusions of fact included in the aforesaid reports of July 1, 1930, April 13, 1931, October 22, 1934, [fol. 654] March 4, 1936, July 27, 1937, July 12, 1938 and March 13, 1939 (Exhibits 1, 2, 3, 4, 8, 12 and 16 to complaint), which said reports, together with the orders issued therewith, are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission. By J. Stanley Payne, Senior Assistant Chief Counsel.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 655] *Duly sworn to by Charles D. Mahaffie. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 656] In United States District Court

Intervener's Answer—Filed Aug. 2, 1940

Come now the above named interveners and for their answer to the complaint of the complainants herein allege and show to the court:

[fol. 657] I

That the Public Utilities Commission of the State of Idaho is a duly and legally constituted statutory body of the State of Idaho, and as such is empowered by the statutes of Idaho to institute, defend and otherwise prosecute such actions for and on behalf of the people of said state; and J. W. Cornell, M. Reese Hattabaugh and R. H. Young are the duly appointed, qualified and acting commissioners of said Public Utilities Commission.

II

That the Public Utilities Commission of the State of Idaho is acting for and on behalf of the State of Idaho and the people of the State of Idaho.

III

That the Idaho State Grange, Incorporated is a non-profit cooperative organization incorporated under the laws of Idaho for the mutual benefit of the farmers of the State of Idaho; that among other purposes set forth in the constitution of said Idaho State Grange, Incorporated, is the promotion of the agricultural industry of the State of Idaho and to work for better transportation and other benefits for agricultural communities; that the duly elected and qualified officers thereof are authorized to carry out the purposes and objectives of said organization as set forth in its constitution and by-laws, and said Idaho State Grange, Incorporated is a proper party in interest in this action and to this answer.

IV

That the Public Utilities Commission of the State of [fol. 658] Idaho appeared as a party in interest in all of the proceedings before the Interstate Commerce Commission set out in the complaint of the complainants and acted for and on behalf and in the interests of all of the above named interveners, and that the orders of the Interstate Commerce Commission herein sought to be enjoined, set aside, annulled, or suspended by the complainants were issued by the Interstate Commerce Commission in such proceedings;

V

That all of the interveners herein, as representing the producers and shippers of grain in the State of Idaho have an interest in the above entitled action in that the grain produced in the State of Idaho and the producers and shippers thereof within the State of Idaho are in direct competition in the disposal of the grain and grain products of this state with the complainants abovenamed and have an interest in the rate structure of grain and grain products within the western district and for export.

VI

First Defense

That the complaint fails to state a cause of action upon which the orders of the Interstate Commerce Commission can in part be enjoined, set aside, annulled, or suspended as prayed for by the complainants.

VII

Second Defense

That the complainants The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. [fol. 659] Clark, are unincorporated voluntary associations without standing to bring suit to set aside any order of the Interstate Commerce Commission.

VIII

Third Defense

1. That all of the interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph I of the complaint;

2. That the interveners admit the allegations contained in paragraph II of the complaint;

3. That the interveners admit the allegations contained in paragraph III of the complaint, except that they have no knowledge or information sufficient to form a belief that the complainants "are in direct competition with other persons and corporations doing a similar business at numerous so-called interior points in the territory adjacent to and surrounding such terminal markets."

4. That the interveners admit the allegations contained in paragraph IV of the complaint;

5. That the interveners admit the allegations contained in paragraph V except that they deny the last two sentences thereof;

6. That the interveners admit the allegations contained in paragraph VI (A) except that they deny that on July 1, 1935, the through rates via and with transit privileges at

the markets became materially higher than the through rates via those markets with transit privileges at interior points, although they admit that this became true at a later date under permission of the Commission's order of March 4, 1936, and the interveners deny the balance of said para- [fol. 660] graph VI (A); that the interveners admit the allegations contained in paragraph VI (B) and VI (C);

7. That the interveners admit the allegations contained in paragraph VII;

8. That the interveners admit the allegations contained in paragraph VIII except that they are without knowledge or information sufficient to form a belief as to the allegations that exhibits 5, 6 and 7 are true and correct copies;

9. That the interveners admit the allegations of paragraph IX;

10. That the interveners admit the allegations contained in paragraph X of the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 9, 10 and 11 are true and correct copies; and they further deny that the railroad carriers failed and refused to change the rates and practices in effect on July 27, 1939, and allege that the carriers did publish rates for transit at Minneapolis, Minnesota, under through rates from Missouri River markets to Chicago, Illinois, and other eastern gateways, which were cancelled on March 27, 1939 by said carriers; and further deny that the charges referred to in paragraph X resulted or result in injury, discrimination or undue prejudice and disadvantage;

11. That the interveners admit the allegations contained in paragraph XI except the inference that the Commission on July 12, 1938, denied reconsideration and reargument, and allege that the Commission did grant reconsideration and reargument but in its subsequent report and order denied the relief sought;

[fol. 661] 12. That the interveners admit the allegations contained in paragraph XII in the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 13, 14 and 15 are true and correct copies;

13. That the interveners admit the allegations contained in paragraph XIII of the complaint except the inference

that the Commission denied on March 13, 1939, the petitions for reconsideration, reargument and reopening, and allege that the Commission again granted reconsideration and reargument but thereafter dismissed the complaints;

14. The interveners admit the allegations contained in paragraph XIV except that they are without knowledge or information sufficient to form a belief that exhibit 17 is a true and correct copy.

15. That the interveners admit the allegations contained in paragraph XV of the complaint, except that they are without knowledge or information sufficient to form a belief that the Commission decisions and orders were based largely upon the allegations, inter alia, contained in subsections (f), (g) and (h) of Section XV;

16. That the interveners deny each and every allegation contained in paragraph XVI of the complaint.

17. That the interveners deny each and every material allegation contained in paragraph XVII of said complaint, except interveners admit that said action is necessary to avoid very numerous other suits and actions.

IX

Fourth Defense

1. As an affirmative defense to said complaint the inter- [fol. 662] veners allege that it is within the statutory duties and authority of the Interstate Commerce Commission to determine and set rates, charges and practices for common carriers which are not unreasonable, unjustly discriminatory or unduly prejudicial, and that the Interstate Commerce Commission in entering the reports and orders referred to in said complaint has found that the rates, charges and practices complained of in said complaint are not unreasonable, unjustly discriminatory or unduly prejudicial, and that such finding is, under the circumstances of the suit herein brought conclusive upon this court;

2. That the complainants have not been damaged or injured as a result of the charges, rates and practices complained of;

3. That the through rates on grain in carload lots from all points in Idaho to destinations east and south are made upon combinations of freight rates to the respective markets and the prescribed proportional rates beyond which proportional rates represent a reasonable average of transit balances. If the carriers were required to and did, as prayed for by the complainants, maintain through rates with transit at primary markets on indirect routes, the result would be to lower transit balances from any such points via the indirect route, than the prescribed proportional rates. The producers and shippers in Idaho would not be able to take advantage of such lower transit balances and would pay the higher proportional. The complainants, and other similarly situated, in such terminal markets would have available and would use such lower transit balances by switching freight bills and thus would defeat [fol. 663] the through combination rates on grain prescribed by the Interstate Commerce Commission between the same points, which would result in undue prejudice and unjust discrimination to producers and shippers located at points within the State of Idaho in violation of Sections 2 and 3 of the Interstate Commerce Act;

4. It is further alleged that the assessment of transit balances from said terminal markets in lieu of present reasonable proportional rates would be destructive of the revenue of the rail carriers, resulting in the collection of charges less than reasonable in violation of section 1 of the Interstate Commerce Act and represent a burden upon other traffic, and in particular, upon the traffic moving from farms and country regions in Idaho to the terminal markets offered for shipment by producers, farmers and shippers of the State of Idaho.

X

Fifth Defense

If rail carriers were required to and did, as prayed for by the complainants, maintain through rates with transit at primary markets on grain products on indirect routes, the result would be lower transit balances from any such point via the indirect route, than prescribed proportional rates. The processors and flour mills in Idaho would not be able to take advantage of such lower transit balances and would pay the higher proportional. The complain-

ants and others similarly situated in such terminal markets would have available and would use such lower transit balances by switching freight bills, and thus would defeat the through combination rates on grain products prescribed by the Interstate Commerce Commission between the same points, which would result in undue prejudice and unjust [fol. 664] discrimination to processors and flour mills located at points within the State of Idaho in violation of sections 2 and 3 of the Interstate Commerce Act; that it would destroy the processing and flour mill industry in Idaho; that the cessation or even sharp curtailment of the processing of grain products in Idaho would in turn severely jeopardize, if not destroy, the dairy industry of Idaho, which is indispensably dependent upon the local feed products derived from local processing of grain products for its existence.

Wherefore, your interveners pray (1) that the complaint as to The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, be dismissed; (2) that the complaint be in all things dismissed; (3) for their costs and disbursements herein, and (4) for such other and further relief as to the court may seem just and equitable in the premises.

J. W. Taylor, Attorney General, State of Idaho Residence: Boise, Idaho. D. W. Thomas, Assistant Attorney General of State of Idaho, Residence: Boise, Idaho. Attorneys for Interveners.

[fol. 665] *Duly sworn to by D. W. Thomas jurat omitted in printing.*

[File endorsement omitted.]

[fol. 666] IN UNITED STATES DISTRICT COURT

INTERVENERS' ANSWER—Filed October 25, 1940

Come now the above named interveners and for their answer to the complaint of the complainants herein allege and show to the court:

[fol. 667] I

That the Board of Railroad Commissioners of the State of North Dakota is a constitutional board of the State of North Dakota, and that Elmer W. Cart, Ben C. Larkin and S. S. McDonald are the duly elected, qualified and acting members of said Board of Railroad Commissioners; and has power under the statutes of the State of North Dakota to represent the State before the Interstate Commerce Commission.

II

That the Board of Railroad Commissioners of the State of North Dakota is acting for and on behalf of the State of North Dakota and the people of the State of North Dakota, including the Farmers Educational and Co-operative Union of America, North Dakota Division, which is an organization of agricultural producers in the State of North Dakota and is a cooperative marketing corporation duly organized and existing under and by virtue of the laws of the State of North Dakota;

III

That the State Mill and Elevator is an industrial institution of, and owned and operated by, the State of North Dakota, in its sovereign capacity.

IV

That the Board of Railroad Commissioners of the State of North Dakota appeared as a party in interest in all of the proceedings before the Interstate Commerce Commission set out in the complaint of the complainants and acted for and on behalf and in the interests of all of the above named interveners, and that the orders of the Interstate Commerce Commission herein sought to be enjoined, set aside, annulled, or sustained by the complainants were issued by the Interstate Commerce Commission in such proceedings;

V

That all of the interveners herein, as representing the producers, processors and shippers of grain and grain products in the State of North Dakota have an interest in the above entitled action in that the grain produced in the

[fol. 668] State of North Dakota is and the producers, processors and shippers thereof within the State of North Dakota are in direct competition in the disposal of the grain and grain products of this State with the complainants above named and have an interest in the rate structure of grain and grain products within the western district and for export.

VI

First Defense

That the complaint fails to state a cause of action upon upon which the orders of the Interstate Commerce Commission can in part be enjoined, set aside, annulled, or suspended as prayed for by the complainants.

VII

Second Defense

That the complainants The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, are unincorporated voluntary associations without standing to bring suit to set aside any order of the Interstate Commerce Commission.

VIII

Third Defense

1. That all of the interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph I of the complaint; except that they admit that The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, are voluntary unincorporated associations;

2. That the interveners admit the allegations contained in paragraph II of the complaint;

3. That the interveners admit the allegations contained [fol. 669] in paragraph III of the complaint, except that they have no knowledge or information sufficient to form a belief that the complainants "are in direct competition with other persons and corporations doing a similar business at numerous so-called interior points in the territory adjacent to and surrounding such terminal markets."

4. That the interveners admit the allegations contained in paragraph IV of the complaint;

5. That the interveners admit the allegations contained in paragraph V except that they deny the last two sentences thereof;

6. That the interveners admit the allegations contained in paragraph VI(A) except that they deny that on July 1, 1935, the through rates via and with transit privileges at the markets became materially higher than the through rates via those markets with transit privileges at interior points, although they admit that this became true at a later date under permission of the Commission's order of March 4, 1936, and the interveners deny the balance of said paragraph VI(A); that the interveners admit the allegations contained in paragraph VI(B) and VI(C);

7. That the interveners admit the allegations contained in paragraph VII;

8. That the interveners admit the allegations contained in paragraphs VIII except that they are without knowledge or information sufficient to form a belief as to the allegations that exhibits 5, 6 and 7 are true and correct copies;

9. That the interveners admit the allegations of paragraph IX;

10. That the interveners admit the allegations contained in paragraph X of the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 9, 10 and 11 are true and correct copies; and they further deny that the railroad carriers failed and re-[fol. 670] fused to change the rates and practices in effect on July 27, 1939, and allege that the carriers did publish rates for transit at Minneapolis, Minnesota, under through rates from Missouri River markets to Chicago, Illinois, and other eastern gateways, which were cancelled on March 27, 1939 by said carriers; and further deny that the charges referred to in paragraph X resulted or result in injury, discrimination or undue prejudice and disadvantage;

11. That the interveners admit the allegations contained in paragraph XI except the inference that the Commission on July 12, 1938, denied reconsideration and reargument, and allege that the Commission did grant reconsideration

and reargument but in its subsequent report and order denied the relief sought;

12. That the interveners admit the allegations contained in paragraph XII in the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 13, 14 and 15 are true and correct copies;

13. That the interveners admit the allegations contained in paragraph XIII of the complaint except the inference that the Commission denied on March 13, 1939, the petitions for reconsideration, reargument and reopening, and allege that the Commission again granted reconsideration and reargument but thereafter dismissed the complaint;

14. The interveners admit the allegations contained in paragraph XIV except that they are without knowledge or information sufficient to form a belief that exhibit 17 is a true and correct copy.

15. That the interveners admit the allegations contained in paragraph XV of the complaint, except that they are without knowledge or information sufficient to form a belief that the Commission decisions and orders were based largely upon the allegations, inter alia, contained in subsections (f), (g) and (h) of Section XV;

16. That the interveners deny each and every allegation [fol. 671] contained in paragraph XVI of the complaint.

17. That the interveners deny, with reference to paragraph XVII, that the complainants have suffered irreparable damage and will, unless the relief prayed for herein be granted, continue to suffer irreparable damage and injury, and further deny that the present rate is unreasonable, unjustly discriminatory, or unduly prejudicial, or that the direct result of the reports and orders of the Interstate Commerce Commission complained of in said complaint is that the trade and business of the complainants and others similarly situated have and are being irreparably injured and damaged and will in the future be practically destroyed unless the relief prayed for is granted, and further deny that the profits, value, volume and good will of the trade and business of complainants and others similarly situated have been and are being seriously damaged and injured as the direct result of the reports and orders there-

in complained of and will be further injured and damaged unless the relief prayed for is granted.

IX

Fourth Defense

1. As an affirmative defense to said complaint the interveners allege that it is within the statutory duties and authority of the Interstate Commerce Commission to determine and set rates, charges and practices for common carriers which are not unreasonable, unjustly discriminatory or unduly prejudicial, and that the Interstate Commerce Commission in entering the reports and orders referred to in said complaint has found that the rates, charges and practices complained of in said complaint are not unreasonable, unjustly discriminatory or unduly prejudicial, and that such finding is, under the circumstances of the suit herein brought, conclusive upon this court;

2. That the complainants have not been damaged or injured as a result of the charges, rates and practices complained of;

[fol. 672] 3. That the through rates on grain and grain products in carload lots from all points in North Dakota to destinations east and south of Duluth and Minneapolis, Minnesota, and Sioux City, Iowa, are made upon combinations of flat rates to those markets and the prescribed proportional rates beyond which proportional rates represent a reasonable average of transit balances. If rail carriers were required to and did, as prayed for by the complainants, maintain through rates with transit at primary markets on indirect routes, such as Minneapolis on an indirect route from Kansas City to Chicago, the result would be lower transit balances from those points via the indirect route, than the prescribed proportional rates above referred to. The producers, flour mills and shippers in North Dakota would not be able to take advantage of such lower transit balances and would pay the higher proportional. The complainants, and others similarly situated, in such terminal markets would have available and would use such lower transit balances by switching freight bills and thus would defeat the through combination rates from North Dakota prescribed by the Interstate Commerce Commission between the same points, which would result in undue pre-

judice and unjust discrimination to producers, flour mills and shippers located at points within the State of North Dakota in violation of sections 2 and 3 of the Interstate Commerce Act. For example, the complainants, and others similarly situated at Minneapolis, would have available for use from Minneapolis, Minnesota, to Chicago, Illinois, a transit balance of 8½¢ per hundred pounds, (this was the remainder of proportional through rates from Kansas City, Missouri, Omaha, Nebraska, and Sioux City, Iowa to Chicago, Illinois, via Minneapolis, Minnesota) while shippers and processors in North Dakota would be required to pay 13¢ per hundred pounds from Minneapolis to Chicago which is the prescribed proportional rate between those points.

[fol. 673] 4. It is further alleged that the assessment of transit balances from said terminal markets in lieu of present reasonable proportional rates would be destructive of the revenue of the rail carriers, resulting in the collection of charges less than reasonable in violation of section 1 of the Interstate Commerce Act and represent a burden upon other traffic, and in particular, upon the traffic moving from farms and country regions in North Dakota to the terminal markets offered for shipment by producers, farmers, processors and shippers of the State of North Dakota.

Wherefore, your interveners pray (1) that the complaint as to The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, be dismissed; (2) that the complaint be in all things dismissed; (3) for their costs and disbursements herein, and (4) for such other and further relief as to the court may seem just and equitable in the premises.

Al. C. Strutz, Attorney General, State of North Dakota, Bismarck, North Dakota.

James M. Hanley, Commerce Counsel, Board of Railroad Commissioners of the State of North Dakota, Bismarck, North Dakota. Attorneys for Interveners.

[File endorsement omitted.]

[fol. 674] IN UNITED STATES DISTRICT COURT

INTERVENERS' ANSWER—Filed October 25, 1940

Come now the above named interveners and for their answer to the complaint of the complainants herein allege and show to the court.

I

That the Board of Railroad Commissioners of the State of Montana is and at all times herein mentioned has been a public board and body and one of the official commissions and departments of government of the State of Montana duly created and existing under and by virtue of the laws thereof; that Paul T. Smith, Horace F. Casey and Austin B. Middleton are the duly elected, qualified and acting members of the Board of Railroad Commissioners of the State of Montana;

[fol. 675] II

That the Board of Railroad Commissioners of the State of Montana is acting for and on behalf of the State of Montana and the people of the State of Montana by virtue of the authority vested in and conferred upon said Board and its members as aforesaid by the laws of the State of Montana;

III

That the Board of Railroad Commissioners of the State of Montana appeared as a party in interest in all of the proceedings before the Interstate Commerce Commission as set out in the complaint of the complainants and acted for and on behalf and in the interests of the people of the State of Montana, and that the orders of the Interstate Commerce Commission herein sought to be enjoined, set aside, annulled or sustained by the complainants were issued by the Interstate Commerce Commission in such proceedings;

IV

That the interveners herein, as representing the State of Montana and the people of the State of Montana are in reality representing the producers, processors and ship-

pers of grain and grain products in the State of Montana and have, therefore, an interest in the above entitled action in that the grain produced in the State of Montana and the producers, processors and shippers thereof within the State of Montana are in direct competition in the disposal of the grain and grain products of this State with the complainants above named and have an interest in the rate structure of grain and grain products within the western district and for export.

V

First Defense

That the complaint fails to state a cause of action upon [fol. 676] which the orders of the Interstate Commerce Commission can in part be enjoined, set aside, annulled or suspended as prayed for by the complainants.

VI

Second Defense

That the complainants The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, are unincorporated voluntary associations without standing to bring suit to set aside any order of the Interstate Commerce Commission.

VII

Third Defense

1. That all of the interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph I of the complaint; except that they admit that The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, are voluntary unincorporated associations;

2. That the interveners admit the allegations contained in paragraph II of the complaint;

3. That the interveners admit the allegations contained in paragraph III of the complaint, except that they have no knowledge or information sufficient to form a belief that the complainants "are in direct competition with other persons

and corporations doing a similar business at numerous so-called interior points in the territory adjacent to and surrounding such terminal markets."

4. That the interveners admit the allegations contained in paragraph IV of the complaint;

5. That the interveners admit the allegations contained in paragraph V except that they deny the last two sentences thereof;

[fol. 677] 6. That the interveners admit the allegations contained in paragraph VI (A) except that they deny that on July 1, 1935, the through rates via and with transit privileges at the markets became materially higher than the through rates via those markets with transit privileges at interior points, although they admit that this became true at a later date under permission of the Commission's order of March 4, 1936, and the interveners deny the balance of said paragraph VI (A); that the interveners admit the allegations contained in paragraph VI(B) and VI(C);

7. That the interveners admit the allegations contained in paragraph VII;

8. That the interveners admit the allegations contained in paragraph VIII except that they are without knowledge or information sufficient to form a belief as to the allegations that exhibits 5, 6 and 7 are true and correct copies;

9. That the interveners admit the allegations of paragraph IX;

10. That the interveners admit the allegations contained in paragraph X of the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 9, 10 and 11 are true and correct copies; and they further deny that the railroad carriers failed and refused to change the rates and practices in effect on July 27, 1939, and allege that the carriers did publish rates for transit at Minneapolis, Minnesota, under through rates from Missouri River markets to Chicago, Illinois, and other eastern gateways, which were cancelled on March 27, 1939 by said carriers; and further deny that the charges referred to in paragraph X resulted or result in injury, discrimination or undue prejudice and disadvantage;

11. That the interveners admit the allegations contained in paragraph XI except the inference that the Commission

on July 12, 1938, denied reconsideration and reargument, and allege that the Commission did grant reconsideration and reargument but in its subsequent report and order denied the relief sought;

[fol. 678] 12. That the interveners admit the allegations contained in paragraph XII in the complaint except that they are without knowledge or information sufficient to form a belief that exhibits 13, 14 and 15 are true and correct copies;

13. That the interveners admit the allegations contained in paragraph XIII of the complaint except the inference that the Commission denied on March 13, 1939, the petitions for reconsideration, reargument and reopening, and allege that the Commission again granted reconsideration and reargument but thereafter dismissed the complaints;

14. The interveners admit the allegations contained in paragraph XIV except that they are without knowledge or information sufficient to form a belief that exhibit 17 is a true and correct copy.

15. That the interveners admit the allegations contained in paragraph XV of the complaint, except that they are without knowledge or information sufficient to form a belief that the Commission decisions and orders were based largely upon the allegations, inter alia, contained in subsections (f), (g) and (h) of Section XV;

16. That the interveners deny each and every allegation contained in paragraph XVI of the complaint.

17. That the interveners deny, with references to paragraph XVII, that the complainants have suffered irreparable damage and will, unless the relief prayed for herein be granted, continue to suffer irreparable damage and injury, and further deny that the present rates are unreasonable, unjustly discriminatory, or unduly prejudicial, or that the direct result of the reports and orders of the Interstate Commerce Commission complained of in said complaint is that the trade and business of the complainants and others similarly situated have and are being irreparably injured [fol. 679] and damaged and will in the future be practically destroyed unless the relief prayed for is granted, and further deny that the profits, value, volume and good will of the trade and business of complainants and other- simi-

larly situated have been and are being seriously damaged and injured as the direct result of the reports and orders therein complained of and will be further injured and damaged unless the relief prayed for is granted.

VIII

Fourth Defense

1. As an affirmative defense to said complaint the interveners allege that it is within the statutory duties and authority of the Interstate Commerce Commission to determine and set rates, charges and practices for common carriers which are not unreasonable, unjustly discriminatory or unduly prejudicial, and that the Interstate Commerce Commission in entering the reports and orders referred to in said complaint has found that the rates, charges and practices complained of in said complaint are not unreasonable, unjustly discriminatory or unduly prejudicial, and that such finding is, under the circumstances of the suit herein brought, conclusive upon this court;

2. That the complainants have not been damaged or injured as a result of the charges, rates and practices complained of;

3. That the through rates on grain and grain products in carload lots from all points in Montana to destinations east and south of Duluth and Minneapolis, Minnesota, and Sioux City, Iowa, are made upon combinations of flat rates to those markets and the prescribed proportional rates beyond which proportional rates represent a reasonable average of transit balances. If rail carriers were required to and did, as prayed for by the complainants, maintain [fol. 680] through rates with transit at primary markets on indirect routes, such as Minneapolis on an indirect route from Kansas City to Chicago, the result would be lower transit balances from those points via the indirect route, than the prescribed proportional rates above referred to. The producers, flour mills and shippers in Montana would not be able to take advantage of such lower transit balances and would pay the higher proportional. The complainants, and others similarly situated, in such terminal markets would have available and would use such lower transit balances by switching freight bills and thus would defeat the through combination rates from Montana pre-

scribed by the Interstate Commerce Commission between the same points, which would result in undue prejudice and unjust discrimination to producers, flour mills and shippers located at points within the State of Montana in violation of sections 2 and 3 of the Interstate Commerce Act. For example, the complainants, and others similarly situated at Minneapolis, would have available for use from Minneapolis, Minnesota, to Chicago, Illinois, a transit balance of 8½¢ per hundred pounds, (this was the remainder of proportional through rates from Kansas City, Missouri, Omaha, Nebraska, and Sioux City, Iowa to Chicago, Illinois, via Minneapolis, Minnesota) while shippers and processors in Montana would be required to pay 13¢ per hundred pounds from Minneapolis to Chicago which is the prescribed proportional rate between those points.

4. It is further alleged that the assessment of transit balances from said terminal markets in lieu of present reasonable proportional rates would be destructive of the revenue of the rail carriers, resulting in the collection of charges less than reasonable in violation of section I of the Interstate Commerce Act and represent a burden upon other traffic, and in particular, upon the traffic moving from [fol. 681] farms and country regions in Montana to the terminal markets offered for shipment by producers, farmers, processors and shippers of the State of Montana.

Wherefore, your interveners pray (1) that the complaint as to the Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, and The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, be dismissed; (2) that the complaint be in all things dismissed; (3) for their costs and disbursements herein, and (4) for such other and further relief as to the court may seem just and equitable in the premises.

Harrison J. Freebourn, Attorney General of the State of Montana, Helena, Montana; (S.) Emmett C. Angland, Counsel, Board of Railroad Commissioners of the State of Montana, Helena, Montana, Attorneys for Interveners.

Duly sworn to by Austin B. Middleton. Jurat omitted in printing.

[fol. 682] [File endorsement omitted.]

[fol. 683] IN UNITED STATES DISTRICT COURT

ANSWER OF THE TEXAS INDUSTRIAL TRAFFIC LEAGUE, FORT WORTH GRAIN AND COTTON EXCHANGE, AND THE TEX-O-KAN FLOUR MILLS COMPANY, INTERVENERS—Filed Nov. 11, 1940

The Texas Industrial Traffic League, the Fort Worth Grain and Cotton Exchange and the Tex-O-Kan Flour Mills Company, interveners herein on behalf of Defendants, hereby adopt and make their own the answer of the Interstate Commerce Commission dated July 31, 1940. In addition thereto, they show to the Court:

I

Under the rate adjustment prescribed by the Commission in 205 I. C. C. 301 (Exhibit 3 to the complaint), through joint overhead rates were applied via and through interior markets, such as Dallas, Texas, Fort Worth, Texas, and other interior transit points. Rates were constructed via and through primary or terminal markets by the use of the same yardstick but, on request of the terminal markets, said rates were broken down into two factors, the out-bound factor being an average of all transit balances applying from the primary market to the specific destination involved. The through rates resulting from each method of making rates is substantially the same, distance considered, but they are differently stated in the tariffs. The rate-break method of stating the rates applies via the primary or terminal markets and the through joint one-[fol. 684] factor method of stating the rates applies via the interior markets and transit points.

The primary markets and the interior markets are permitted to draw grain from various producing points, store, mill and process it in transit and send it on to final destination at the remainder of the through rate just as though the shipments had moved through from point of production to final destination without stopping enroute. From the interior markets, such as Dallas and Fort Worth, Texas, the out-bound balances vary according to the origin of the grain and the amount of freight paid inbound. From the primary markets, such as Kansas City, the out-bound balance to each destination is the same in amount regardless of the point of origin or the amount of the freight paid inbound, because the so-called proportional rate represents

an average of all out-bound balances to that particular destination from that market.

II

The so-called out-bound proportional rates applying from the terminal markets, referred to in Paragraph I hereof, are substantially less than the reasonable maximum rates prescribed by the Commission in 205 I. C. C. 301 (Exhibit 3 to the complaint) and represent the average out-bound transit balance that would accrue under through joint one-factor rates to the destination involved, if shipments were transited at the terminal market under through joint overhead rates.

To illustrate, the rate prescribed by the Commission on grain and grain products from Kansas City, Mo., to Fort Worth, Texas, a distance of 507 miles, was 34 cents per 100 pounds. The proportional rate prescribed from Kansas City to Fort Worth was 20 cents per 100 pounds, this being an average of the high and the low transit balance under through joint one-factor overhead rates. Your in- [fol. 685] terveners are not informed what the Commission found to be the high and the low out-bound transit balance from which it determined the 20-cent proportional rate but the following method was used: Assume the highest possible out-bound balance from Kansas City to Fort Worth, Texas, was 30 cents per 100 pounds, and assume that the lowest out-bound balance was 10 cents per 100 pounds. The average of the foregoing would be 20 cents per 100 pounds. That was prescribed by the Commission to apply on all out-bound transit shipments to Fort Worth, Texas, regardless of point of origin. The proportional rates to all other destinations to which proportional rates were published from Kansas City were determined in the same manner.

III

The rate-break system of stating through rates applicable via the primary markets was prescribed by the Commission at the request of the terminal markets and it gives to those markets a constant transit balance to any given destination. Using Fort Worth, Texas, as an example, it requires Kansas City to pay a 20-cent out-bound balance on shipments originating at points from which the out-bound balance under through joint one-factor overhead rates would

be only 10 cents per 100 pounds. To offset that loss, however, the Kansas City transit operator is privileged to ship to Fort Worth grain which originates at points from which the out-bound balance under through joint one-factor overhead rates would be 30 cents per 100 pounds. In effect, the out-bound balances are grouped and the average of the group is applied on all out-bound transit shipments to a given destination just as, in using group rates, the average of the rates from all points in a given origin group are applied from each and every point in that group, which custom has been followed by the railroads and the Commission since rate making in the United States began.

[fol. 686] IV

Complainant now seeks to retain the benefit of the rate-break system of stating rates and the benefit of out-bound average proportionals where the out-bound transit balances under through joint one-factor overhead rates would be higher than the proportionals and, at the same time, obtain the benefit of actual transit balances where lower than the average used in setting the proportionals. This would, in effect, permit the Kansas City shipping interests to use the proportional rates, based on averages as hereinbefore stated, as a ceiling beyond which it would not have to go in paying out-bound transit balances, while at the same time obtaining the benefit of low actual out-bound balances where less than the average. The interior markets and transit points, via which rates are stated as through joint one-factor overhead rates, must in all instances pay the actual out-bound transit balance whether high or low. They have no ceiling to protect them. To permit the Kansas City interests to use a ceiling based on the average out-bound balances and at the same time have the benefit of actual balances where less than the average would unduly prefer the Kansas City shippers and unduly prejudice these interveners in violation of Sections 2 and 3 of the Interstate Commerce Act (49 U. S. C. A. 2 and 3). The only legal substitute for the two different systems of stating rates which have been prescribed by the Interstate Commerce Commission on request of the terminal markets would be to apply via the terminal markets, as well as the interior markets, a system of one-factor overhead rates which would contemplate the payment of the actual transit balances existing in each particular case, regardless of the average which is now applied

from the terminal markets. This would make it necessary [fol. 687] to cancel all rate-break combination rates and proportional rates and place the whole territory, including the terminal markets as well as the interior markets, on a straight distance basis of rates stated as through overhead one-factor rates.

Wherefore, interveners respectfully ask that the complaint herein be dismissed.

Respectfully submitted, Texas Industrial Traffic League, Fort Worth Grain and Cotton Exchange, Tex-O-Kan Flour Mills Company, By Ralph W. Currie, Frank A. Leffingwell, V. E. Phillips, Their Attorneys.

Address: Leffingwell, Currie & Davis, 1908 Santa Fe Building, Dallas, Texas.

Dated: August 14, 1940.

Duly sworn to by D. R. Simpson. Jurat omitted in printing.

[fol. 688] [File endorsement omitted.]

[fol. 689] IN UNITED STATES DISTRICT COURT

TRANSCRIPT OF PROCEEDINGS—November 11, 1940

Be It Remembered, that heretofore, to wit, on Monday, the 11th day of November 1940, this cause came on for hearing before the Honorable Seth Thomas, the Honorable Merrill E. Otis, and the Honorable John Caskie Collet, sitting as a three-judge court, at Kansas City, Missouri, and the following are the appearances as presented on said day in said court, and thereupon proceedings as herein set forth were had:

Judge Thomas: Case No. 555, Board of Trade of Kansas City and others against the United States and others, is on the docket for hearing this morning.

We will have the appearances for the different parties entered first.

Mr. Borders: May it please the court, the plaintiffs are [fol. 690] ready.

The plaintiffs are represented by Samuel J. Wettrick of Chicago, Wilfred Wimmell and M. W. Borders of Kansas City.

Judge Thomas: Appearances for the defendants.

Mr. Brittingham: May it please the court, the United States is represented by S. R. Brittingham, Jr., Washington, D. C.

Mr. Payne: The Interstate Commerce Commission is represented by J. Stanley Payne of Washington, D. C.

Judge Thomas: Are there appearances for the interveners?

Mr. Hanley: May it please the court, North Dakota Public Service Commission or Railroad Commission together with the Farmers' Union of North Dakota and the State Mill & Elevator of North Dakota are represented by James M. Hanley.

Mr. Angland: The Board of Railroad Commissioners of the State of Montana is represented by Emmett C. Angland, Assistant Attorney General and attorney for the Railroad Commission.

Mr. Thomas: May it please the court, the State of Idaho and the State Grain of Idaho are represented by D. W. Thomas, the Assistant Attorney General of the State of Idaho.

Mr. Phillips: May it please the court, the Texas Industrial Traffic League, the Fort Worth Grain and Cotton Exchange, and The Texacan Flour Mills Company have [fol. 691] filed a petition to intervene and they are represented by Ralph W. Curie, Frank A. Lefingwell, and V. E. Phillips, and notice was served the day they would be presented the order for the right to intervene. Notice was served to all counsel and copies of the action have been filed with counsel.

Judge Thomas: The order to intervene will be granted.

Mr. Phillips: Thank you.

Mr. Bee: May it please the court, the Corporation Commission of the State of Oklahoma is represented by C. B. Bee, special counsel for the commission.

We had no opportunity to see the bill in this case until Saturday.

The commission, the Corporation Commission of Oklahoma, participated before the Interstate Commerce Commission throughout these proceedings, and ask leave of

court to appear today, make argument if necessary, and to file intervening petition immediately and serve it upon necessary parties.

Our interest will be no different than that of the government and the Interstate Commerce Commission; merely desire to support their position.

Mr. Borders: May it please the court, we have no objection to any of these interventions. In making that statement, however, I would like to make it clear that all of the interveners have arranged themselves on the same side as the defendants. Therefore insofar as the argument is [fol. 692] concerned we think whatever time may be allotted by the court should be divided equally between the plaintiffs on one side and defendants and interveners on the other. We have no objection to any intervention whether it has been taken in time or whether it is formal or informal.

Judge Thomas: Leave to intervene on the terms suggested that are to be taken care of immediately will be granted.

Is plaintiff ready to begin?

Mr. Borders: Yes, sir.

We have some other matters before we get to the argument, Your Honor.

Prior to it or about the time this case was set for hearing it was suggested by Judges Otis and Collet that we attempt to arrive at some kind of a stipulation with the government and the Interstate Commerce Commission. Pursuant to that suggestion we conferred with Mr. Payne and Mr. Brittingham and we were not able to arrive at any stipulation as to the facts.

I think all parties realize that it is perhaps a physical and certainly a financial impossibility to present to this court the entire record in this case, it having consisted of many thousands of pages and many hundreds of exhibits, and it appearing to the representatives of the United States and the Interstate Commerce Commission and to us that [fol. 693] all of the questions which will be presented in argument were fully presented in two formal complaint cases wherein the complainants or some of the complainants sought relief before the Interstate Commerce Commission. All of those questions having been thoroughly discussed in the records in these two cases, it was agreed between us that we would present the records in those two

cases as evidencing the different factual situations, which will be discussed in the argument of this case today.

I wrote to the various interveners and to the court advising of that fact, and I have not received any objection to that procedure. We would, therefore, like to present the records in the two formal complaint cases which have been certified to by the secretary of the Interstate Commerce Commission as being true and correct copies of the records in those cases.

Offers in Evidence

The first of these cases is Docket No. 27580, Atkinson Milling Company, et al. vs. Alton Railroad Company, et al. We would like to offer first the total of the exhibits in this case as Plaintiff's Exhibit No. 1.

We would then like to offer as Plaintiff's Exhibit No. 2 the certified copy of the transcript of the evidence in the same case from Pages 1 to 1333, inclusive; and

As Exhibit 3 certified copy of the evidence in the same case from Pages 1334 to and including 2435.

[fol. 694] We then offer in evidence certified copy of the exhibits in the case of Docket 27628, Board of Trade of Kansas City, Missouri, vs. Alton Railroad, et al., and 27628 (Sub. No. 1) Omaha Grain Exchange, et al. vs. Alton Railroad, et al., as Plaintiff's Exhibit No. 4; and

As Plaintiff's Exhibit 5 certified copy of the evidence in that case from Page 1 to 1519, inclusive; and

As Exhibit 6 evidence in the same case, Page 1520 to 2665, inclusive; and

As Exhibit 7 certified copy of the evidence from 2666 to 4000, inclusive; and

As Plaintiff's Exhibit No. 8 certified copy of the evidence in the same cases from Page- 4001 to 4626, inclusive.

We offer all of those in evidence.

(Thereupon certain records were marked by the reporter as Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, and 8, respectively.)

Mr. Payne: No objection, Your Honor.

Judge Thomas: They will be received in evidence.

Mr. Borders: I might say that perhaps before introducing that evidence I should have presented our requested findings of fact and conclusions of law which were requested by Judge Collet to be presented at this time.

May it be understood that the exhibits to the petition are considered a part of the record?

[fol. 695] Mr. Payne: Yes.

Mr. Borders: Those exhibits, if the court please, are the orders fundamentally of the commission about which we are complaining.

WALTER R. SCOTT, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Borders: May it please the court, before proceeding with this evidence I might say that in the conference with the representatives of the Interstate Commerce Commission and the United States it was agreed that it would be very desirable to simplify the situation about which we are going to talk in this argument, because if we do not do that there being so very many situations, running into the hundreds, it might be very confusing both to the court and to the parties, and we therefore agreed that as illustrative of the situation, which is the one complained of in this case, that we would discuss four different situations. We handed to the court some days ago a copy of our trial brief. Those situations are found on Pages 4, 5, and 6. The reason for simplifying is that it is the opinion of both plaintiffs and the defendants that the principle as illustrated in these different illustrations in the brief about which we will have some slightly further testimony now do illustrate the points of difference and give point to the principles involved in the argument here.

[fol. 696] I don't want to testify, Mr. Payne, but I think we will save time with this explanation. With reference to these four situations presented on Pages 4, 5, and 6 of the brief it is agreed that the first three are situations where the tariffs therein set out were definitely prescribed by order of the commission. Those three you will note involve—the first one is a movement from Kansas City to Chicago via Omaha and other routes and involves a shipment from what we term a primary market through a primary market to a destination. The second is the reverse of that, Omaha through Kansas City to Chicago. The third is a situation of movement of grain from Omaha through Kansas City to St. Louis. The fourth situation is the movement from San Antonio to St. Louis where the grain might be moved through Kansas City. As to that situation it is our contention, on account of the reasons

as stated in the brief, that those tariffs and those rates were prescribed by the commission not in the same manner in which the tariffs and rates in the first three situations were, because in the first three situations they were definitely set out in the orders. In this situation merely because no key points of origin were taken south of the line of the Texas and Pacific Railroad running through Fort Worth east and west but an order was made that other key points of origin in that territory must bear a reasonable relation to the prescribed orders and prescribed rates, and they were prescribed from Fort Worth. The commis- [fol. 697] sion contends that they were not specifically prescribed by order of the commission. However, that is illustrative of a situation where grain moves from a point of origin or a point of production to a point of destination and moves through, or mainly through, a primary market such as Kansas City.

The fifth situation is a situation where although the figures set forth in the brief are not absolutely accurate, nevertheless, it is illustrative, and it represents a situation, where the rates were prescribed by the commission, but where the point of origin is the production point of the grain instead of a primary market as in the first three situations. So far as we are concerned those are the four situations which we are going to discuss here, merely as illustrative of the principle involved in this case. We won't propose to go into any of the others.

Is that a fair statement, Mr. Payne, of the situation?

Mr. Payne: Yes, in general. Except that on the last illustration there, Your Honors, we can not agree that those rates are correct.

Mr. Borders: There is a difference of one cent or so between us.

Mr. Payne: As to the first three situations we admit that the situations there referred to are covered by the commission's order and prescribed. The fourth we contend is [fol. 698] not covered by the commission's order, that the commission prescribed certain rates and rate bases from, on and west of the line of the Santa Fe southward, from Arkansas City, Kansas, throughout Oklahoma to Fort Worth, Texas, and did not make any requirements concerning the territory south of Fort Worth, Texas, such as San Antonio, and that the carriers put in certain rates from San Antonio, perhaps in what they thought would be the

proper relation, but whether they are the proper relation or not, if there is a question on that score, would be one for further determination by the commission. Hence, we can not admit that the rates from San Antonio were prescribed in this order.

Direct examination.

By Mr. Borders:

Q. Will you state your name, please?

A. Walter R. Scott.

Q. Your address?

A. 1418 Board of Trade Building, Kansas City, Missouri.

Q. What is your position, Mr. Scott?

A. I am secretary and transportation commissioner of the Board of Trade of Kansas City, Missouri.

Q. How long have you occupied that position?

A. Some 20 years.

Q. What are your general duties?

A. As secretary I have charge of the records of the [fol. 699] association and act as its executive officer. As transportation commissioner I represent the Board of Trade in various ways in matters connected with the transportation of grain and grain products and the rates for such transportation.

Q. Is part of your duties, Mr. Scott, the preparation of cases and the defense of cases before the interstate commerce for the Kansas City Board of Trade?

A. Yes.

Q. Are you and have you been for many years thoroughly familiar with the tariffs and the rates involved in the movement of grain and grain products?

A. Yes, that is my business.

Q. In the cases, Mr. Scott, resulting in the orders which are complained of in this cause did you represent some of the parties before the Interstate Commerce Commission?

A. I did.

Q. Mr. Scott, have you prepared a booklet of five different maps showing representative routes and location of transit points?

A. I have.

(Thereupon a booklet of maps was marked by the reporter as Plaintiff's Exhibit No. 9.)

Q. And is that what has been marked Plaintiff's Exhibit 9 in this case?

[fol. 700] A. Yes.

Q. Does each one of those maps, Mr. Scott, represent one of the five different situations which have been mentioned here in the statements of counsel and which are mentioned in the Plaintiff's brief on Pages 4 and 5?

A. That is correct. The showing is, however, representative, Mr. Borders, and does not include all the routes, because to do so would make a very complicated map. This is a simplified, representative form.

Q. In other words, this merely gives the highlights of the movement as represented in each one of these five typical situations? Is that correct?

A. That is correct, yes.

Q. Now will you take Plate 1 and explain just what that is, Mr. Scott?

A. Plate 1 deals with the proportional rate from Kansas City to Chicago. It shows by a blue line the location of the shortest route from Kansas City to Chicago.

Q. That is the Santa Fe?

A. The route of the Atchison, Topeka & Santa Fe Railway. It shows further by red lines some, but not all, of the routes authorized by the tariff from Kansas City to Chicago through Omaha, and then it shows by other lines other routes which are not the shortest route nor applicable through Omaha.

[fol. 701] Q. That is, the red lines are routes by which grain and grain products may be moved from Kansas City through Omaha to Chicago?

A. At the established rate which is the same as from Kansas City to Chicago over the short line.

Q. And the white lines represent routes by which grain and grain products may move from Kansas City to Chicago, but not through Omaha or a primary market, or rather not through Omaha specifically?

A. That is right. And may move at the same rate, you understand.

Q. Mr. Scott, the rate from Kansas City to Chicago over the Santa Fe per hundred pounds is what?

A. Sixteen cents.

Mr. Payne: Just a moment. May it please the court, I must interpose an objection to this testimony. We have

no objection to maps showing geographical facts of which the court will take judicial notice, but in a proceeding of this sort, a review of the order of the Interstate Commerce Commission, the validity of the commission's order is necessarily to be tested upon the evidence before it and not upon new evidence introduced for the first time in court so that these facts must be shown by the commission's [fol. 702] record and not by new evidence here introduced.

So far as these plates are concerned I think it is pretty evident that they represent in a general way, an illustrative way, these different routes. But as for the rates and so on I can see no grounds for admissibility of that. Those facts are to be taken from the commission's reports, the fact-finding body.

Mr. Borders: I readily grant that the statement of counsel is correct. I was merely attempting to very briefly, and I don't propose to go beyond this, tie in the rates with these different routes so that the court in the discussion ensuing will have in mind exactly what the situation is. It is purely as a matter of convenience to the court. If counsel insists upon the objection, I think probably it is well taken.

Judge Otis: You can state the same facts in your argument.

Mr. Borders: Yes, I can.

By Mr. Borders:

Q. Mr. Scott, you have on this plat or plate a number of circles. What do those represent?

A. They represent the location of the indicated cities.

Q. State whether or not at those indicated cities transit of grain and grain products is permitted?

A. It is.

Q. Turning to your plate 2——

[fol. 703] Mr. Payne (interrupting): Pardon me. I had understood that my objection was sustained to this line of evidence.

Mr. Borders: All right. Strike that question out.

By Mr. Borders:

Q. Will you explain very briefly your Plate 2, Mr. Scott?

A. Plate 2 is the representation of some of the routes authorized by the tariff from Omaha to Chicago.

Q. And your blue line there indicates the shortest line?
A. It does. And the red lines are routes through Kansas City.
Q. And the white lines?
A. Are other routes.
Q. Now your Plate 3.
A. Plate 3 represents routes from Omaha to St. Louis, the same coloration of lines being used.
Q. Blue representing the short line, and the red representing through Kansas City, and the white, other lines not passing through Kansas City?
A. Correct.
Q. Your Plate 4.
A. Plate 4 represents routes from San Antonio, Texas, to St. Louis, Missouri, and here again the blue line is the shortest authorized route, red lines are routes through Kansas City, and the white lines are other routes.
Q. That represents movement from San Antonio to St. Louis?
[fol. 704] A. Yes, sir.
Q. And your Plate 5.
A. Plate 5 represents the authorized routes from points in Iowa to St. Louis showing for example the movement from Indianola, Iowa. The blue line is the shortest authorized route, red line is the route through Kansas City, the white lines are other routes.

Mr. Borders: We offer in evidence Plaintiff's Exhibit No. 9, (Said exhibit 9 is attached to this transcript and made a part hereof as if inserted at this point.)

(Thereupon a booklet was marked by the reporter as Plaintiff's Exhibit No. 10.)

By Mr. Borders:

Q. Mr. Scott, have you prepared another table or statement which has been marked Plaintiff's Exhibit No. 10?
A. I have.
Q. Will you explain what that is, please?
A. This statement is a compilation showing all of the routes authorized by the tariffs for the transportation of grain and grain products covered by the situations which you have referred to as representative or typical situations.
Q. That is, the same five situations?

A. Yes, sir, and they follow the map, Exhibit No. 9, and give the detail of all of the routes covering those same situations.

Q. That is, the Section 1 refers to the Plate 1 of Exhibit 9?

A. That is correct.

[fol. 705] Q. And Section 2 refers to Plate 2 of Exhibit 9?

A. That is right.

Q. That shows all of the routes from Kansas City to Chicago? Is that correct?

A. That is right.

Q. The railroads over which the routes pass, the distance in miles, the rate, the transit points, and the rate at those points? Is that correct?

A. Yes, it is correct, except that in the numbered pages the distances through the transit points of Omaha, Kansas City, Leavenworth, Atchison, and St. Joseph are not included, that is, every other transit point is included.

Q. They are included in the general sheet?

A. Yes, sir.

Q. Which is headed Section 1 for the first section? Is that correct?

A. At the beginning of each section there is a general sheet which shows the information as to the transit points I named.

Q. This exhibit, Mr. Scott, was made up from the tariffs on file with the Interstate Commerce Commission? Is that correct?

A. That is correct.

Q. State whether or not, Mr. Scott, this is merely a compilation of data from those tariffs.

[fol. 706] A. It is nothing but that.

Mr. Borders: We offer in evidence Plaintiff's Exhibit 10.

Mr. Payne: I will ask just a question or two on cross-examination.

Cross-examination.

By Mr. Payne:

Q. Mr. Scott, was the data in this exhibit taken from exhibits for the commission?

A. No, the compilation was made from tariffs filed with the Interstate Commerce Commission.

Q. Were those tariffs a part of the record?

A. Part of what record?

Q. The record before the commission.

A. Only by reference, Mr. Payne. They are by reference, yes. The tariffs themselves were not introduced in the record before the Interstate Commerce Commission, but they are there by reference.

Q. There were numerous exhibits before the commission showing these rates, routes and distances, were there not?

A. Yes, there were a number of different exhibits purporting to show different situations of this kind in that record, yes.

Q. You have some rates, routes, and distances in this compilation that were not in the exhibits before the commission?

A. That could be so. I haven't checked this compilation against the exhibits in the case you refer to to determine [fol. 707] whether or not any detail is included here which is not included there.

Mr. Payne: If the court please, I have no objection to any matter going before the court for its own convenience, but here is a very large compilation that might take tariff men several weeks to check out, and I am sure I do not know whether it is correct or not, and it is admitted that it contains matter that is not before the commission and therefore not considered by the commission. For that reason I can not see its relevancy or pertinency here in view of the well-*estab-* established rule in the case which is on review. It is not a trial de novo and on that ground I object to the evidence and object to the exhibit.

Judge Thomas: The objection will have to be sustained unless further proof is given.

Mr. Borders: Very well. The plaintiff rests the presentation of evidence.

Offers in Evidence

Mr. Payne: If the court please, I have some certified copies. Shall I present them at this time?

Judge Thomas: Yes, sir.

Mr. Payne: In the bill of complaint presented to this court a number of the petitions for reconsideration, reargument, or rehearing filed with the Interstate Commerce Com- [fol. 708] mission were attached to the bill as exhibits. Those petitions were replied to by parties whose interests oppose those of the petitioners and it seems to me, there-

fore, to make the record complete these replies should be before the court.

May I make a brief explanation? After the close of the grain case there were three formal complaints filed by the Atkinson Milling Company, the Kansas City Board of Trade, and the Omaha Board of Trade. Those complaints alleged that the situation here before the court was unreasonable, unjustly discriminatory, against the primary markets and unduly prejudicial against those markets and in favor of interior points. The commission held separate hearings on those complaints, the record of which has been put before you. There were briefs and an argument and a report issued by the commission in July 1937 in which the commission granted permission to the carriers, though not requiring it by mandatory order, to extend the transit here in question. After that report was issued numerous complaints were filed, numerous petit-ons for reconsideration were filed, and they are certified by the secretary of the Interstate Commerce Commission.

I offer them in evidence.

[fol. 709] (Thereupon certain reports were marked by the reporter as Defendant's Exhibit No. 11.)

The carriers who were permitted to grant this transit chose not to do so. Thereupon the petitioners, the primary markets, petitioned the commission for reconsideration and reargument and the issuance of a mandatory order. That petition was replied to by various other interests.

(Thereupon certain papers were marked by the reporter as Defendant's Exhibit No. 12.)

I offer in evidence the replies of various parties to that petition as Defendant's Exhibit No. 12.

There was further argument, those petitions were granted, the petitions for the primary markets were granted, there was a further argument before the commission and a new report in which the commission found that the rates and practices complained of were not discriminatory, were not unreasonable and were not unduly prejudic-al and dismissed the complaints. Afterwards the complainants in those proceedings filed further petitions for reconsideration and those petitions are already a part of the record. They were replied to by various interested parties and I offer

the certified copies of their replies as Defendant's Exhibit No. 13.

[fol. 710] (Thereupon certain papers were marked by the reporter as Defendant's Exhibit No. 13.)

Later the interested railroads and the Minneapolis Association petitioned the commission for an exception to what was known as the exclusive rule for the application of rate-break combinations. Those petitions were replied to by various parties and the petitions as well as the replies I offer in evidence as Defendant's Exhibit No. 14.

(Thereupon certain papers were marked by the reporter as Defendant's Exhibit No. 14.)

There were still other petitions filed by the complainants in the formal complaints that I have referred to and they were replied to by various opposing interests on various dates and I offer those replies as Defendant's Exhibit No. 15.

(Thereupon certain papers were marked by the reporter as Defendant's Exhibit No. 15.)

I want to call the court's attention to the fact that two formal complaints involving the question here before the court are now pending before the Interstate Commerce Commission. That is to say, after all these lengthy proceedings new complaints were filed which again brought before the commission the same question that had been decided in the early, formal complaint cases. The com-[fol. 711] mission received those complaints and assigned them for hearing. The hearing has been had, and they are now pending decision before the commission. I bring that to the attention of the court just to illustrate the administrative nature of the question here involved and that there is a possibility that by further proceedings and perhaps further evidence the commission will be persuaded to make a different ruling. That is always possible since a rate order is never res judicata. Here are certified copies of those new complaints, and I have a few pages, that is, the first few pages and the last pages of the transcript of the record simply to show that those complaints were received and filed and a hearing granted. I offer the complaint of the Board of Trade of Kansas City, Missouri, against Chicago, Rock Island & Pacific Railway Company

in Interstate Commerce Commission Docket No. 28499 as Defendant's Exhibit No. 16.

(Thereupon certain papers were marked by the reporter as Defendant's Exhibit No. 16.)

Similarly, a complaint of the Board of Trade of Kansas City against the Chicago, Rock Island & Pacific, the Board of Trade of Kansas City, Missouri, and the St. Joseph Grain Exchange against the Missouri Pacific in Interstate Commerce Commission Docket No. 28486 as Defendant's [fol. 712] Exhibit 17; and

As Defendant's Exhibits 18 and 19, certified copies of the first few pages and the last page of the hearing in each of those cases.

(Thereupon certain papers were marked by the reporter as Defendant's Exhibits Nos. 18 and 19, respectively.)

Mr. Borders: We have no objection to the introduction of any of these exhibits. However, I might, I am compelled to, say with reference to Defendant's Exhibits 15, 16, 17, and 18, these two formal complaint cases which are now pending, that those are cases involving only in each case one specific instance of the application of this general principle about which we are complaining, which instance in each case seems to be particularly erroneous and particularly detrimental. It isn't illustrative of the general proposition at all and I trust that Mr. Payne's optimistic remarks with reference to what the commission is going to do will be reflected by the reports and orders of the commission. But I think in view of the past expressions of the commission that I would be derelict in my duty if I didn't point out that that is a rather far-fetched expression of hope.

Mr. Payne: I merely expressed what was in the range of possibility.

[fol. 713] Mr. Borders: I want it understood that neither one of the situations contained in those formal complaint cases pending are utilized in any of these five situations.

Mr. Payne: If Your Honor please, there are three copies here of related reports of the commission which I think should be added to the reports that you already have to make the situation complete. For your convenience there are copies of the Interstate Commerce Act.

Judge Thomas: There is no objection to the introduction of these exhibits offered by the United States?

Mr. Borders: No objection.
Judge Thomas: They will be received.
Do the defendants rest?
Mr. Payne: Yes, Your Honor.

(Thereupon at this time the witness was excused and left the stand).

Judge Thomas: Are you ready for the arguments?
Mr. Borders: Yes, Your Honor.

[fol. 714] PLAINTIFFS' EXHIBIT No. 9

Maps Showing Representative Routes and Location of Transit Points

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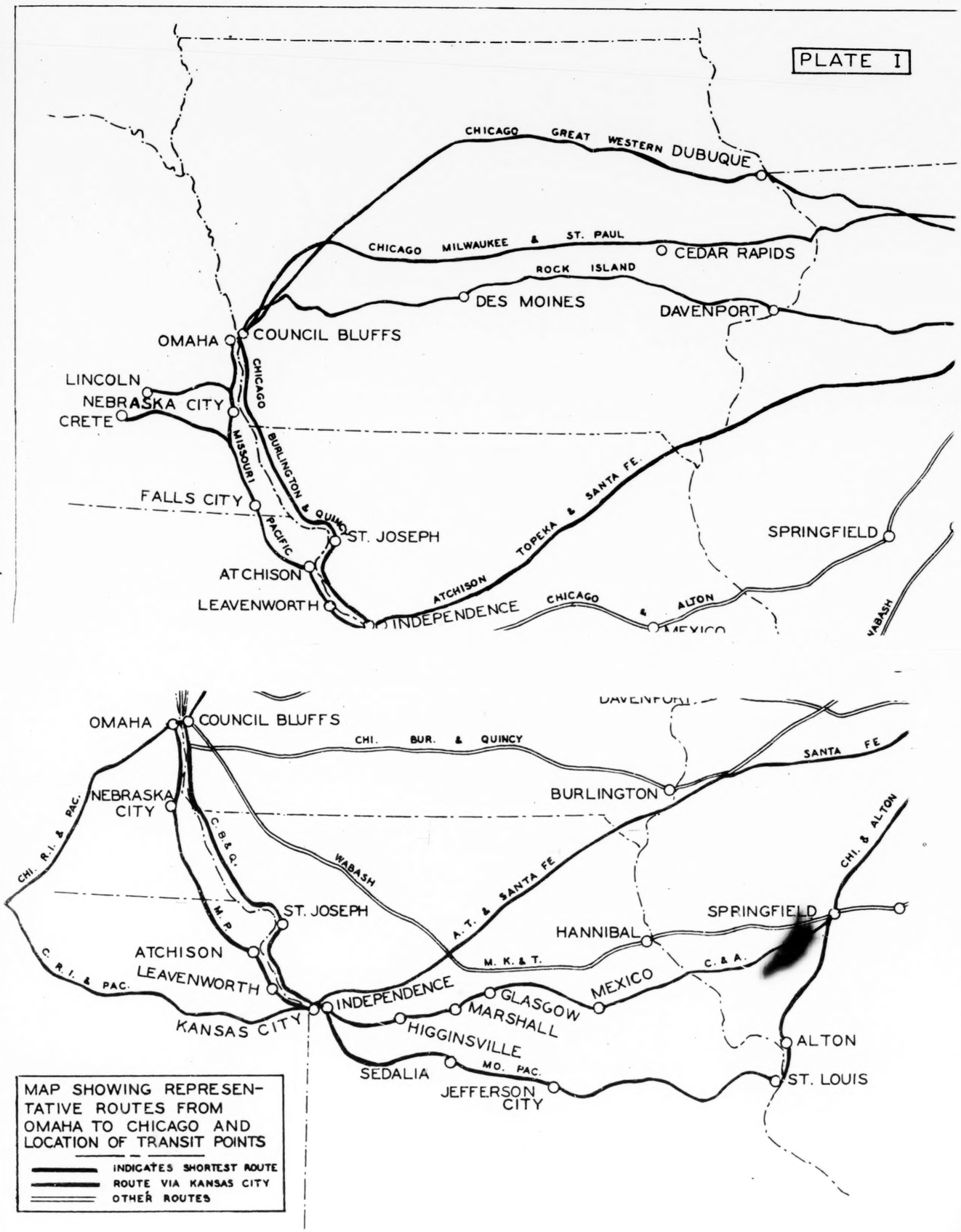
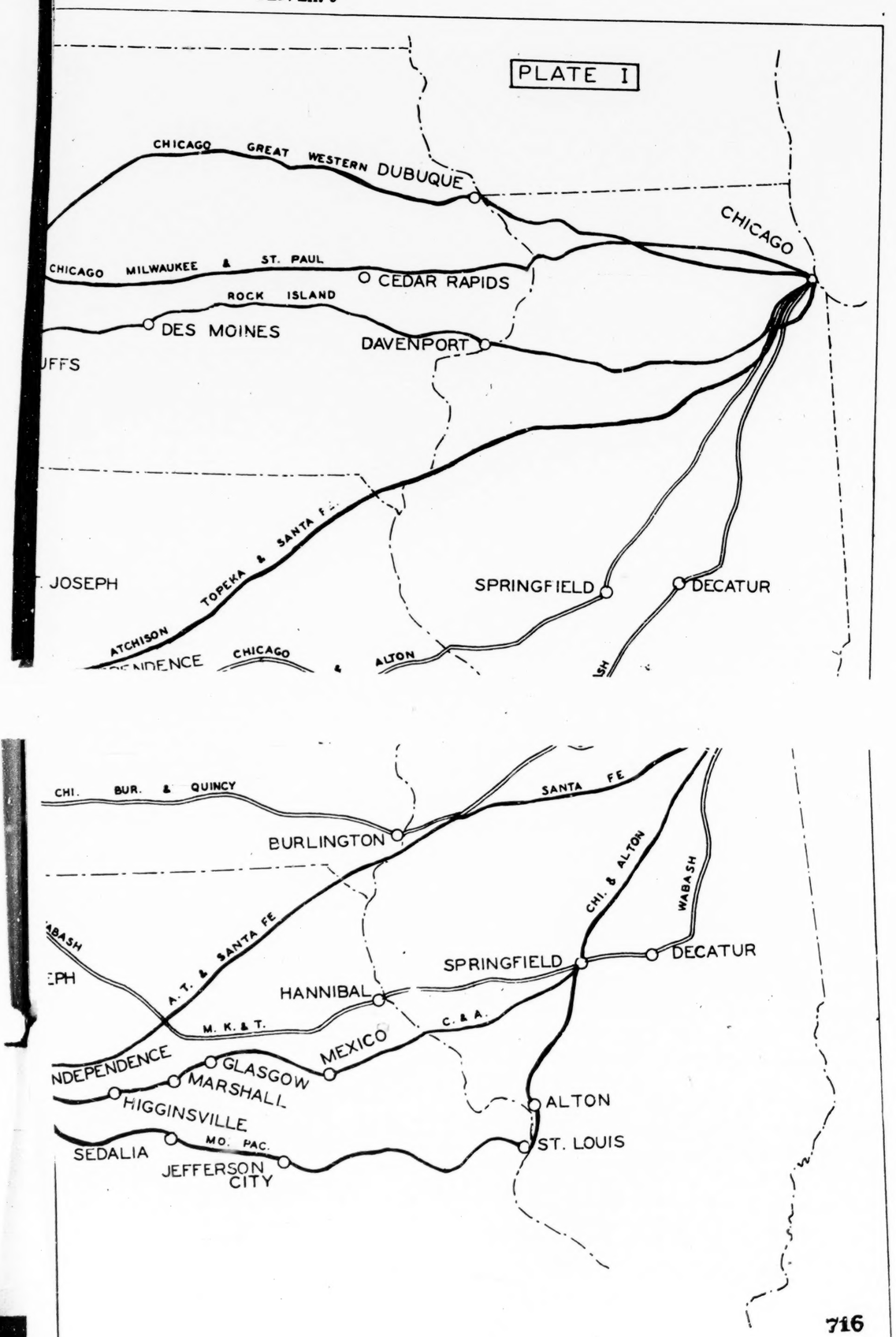


KANSAS CITY BOARD OF TRADE

PLT. EX. 9



KANSAS CITY BOARD OF TRADE

LINCOLN
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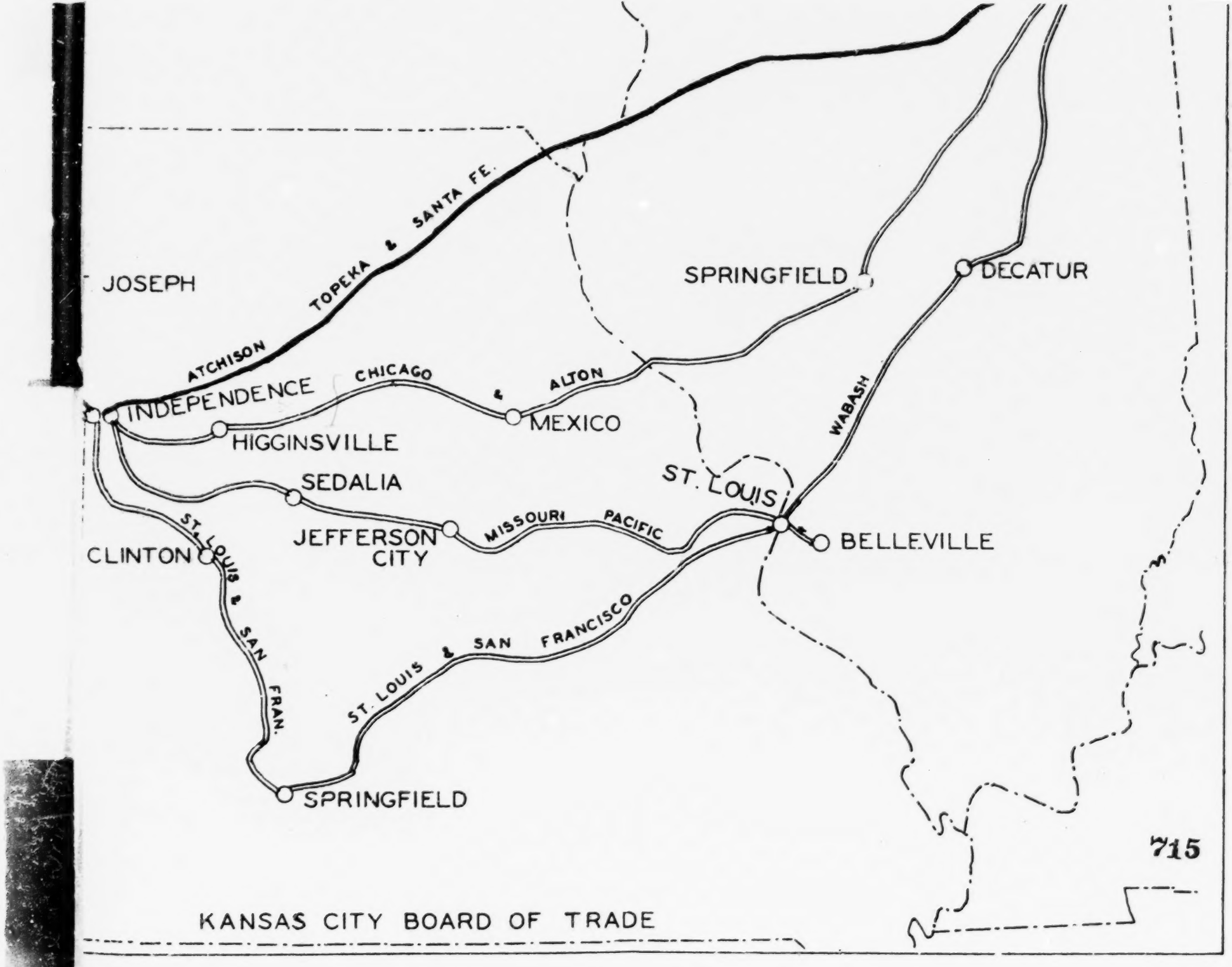
CRETE
CHICAGO
MISSOURI
BURLINGTON & QUINCY
FALLS CITY
PACIFIC
ST. JOSEPH
ATCHISON
LEAVENWORTH
KANSAS CITY
ATCHISON
TOPEKA & SANTA FE.
INDEPENDENCE
CHICAGO & ALTON
MEXICO
HIGGINSVILLE
SEDALIA
JEFFERSON CITY
MISSOURI PACIFIC
ST. LOUIS
WABASH
SPRINGFIELD
DEC
BELLEVILLE
CLINTON
ST. LOUIS & SAN FRAN.
ST. LOUIS & SAN FRANCISCO
SPRINGFIELD

MAP SHOWING REPRESENTATIVE ROUTES FROM KANSAS CITY TO CHICAGO WITH LOCATION OF TRANSIT POINTS

INDICATES THE SHORTEST ROUTE
ROUTES VIA OMAHA
OTHER ROUTES

KANSAS CITY BOARD OF TRADE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WABASH
SEDALIA
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JEFFERSON CITY
MISSOURI PACIFIC
BELLEVILLE
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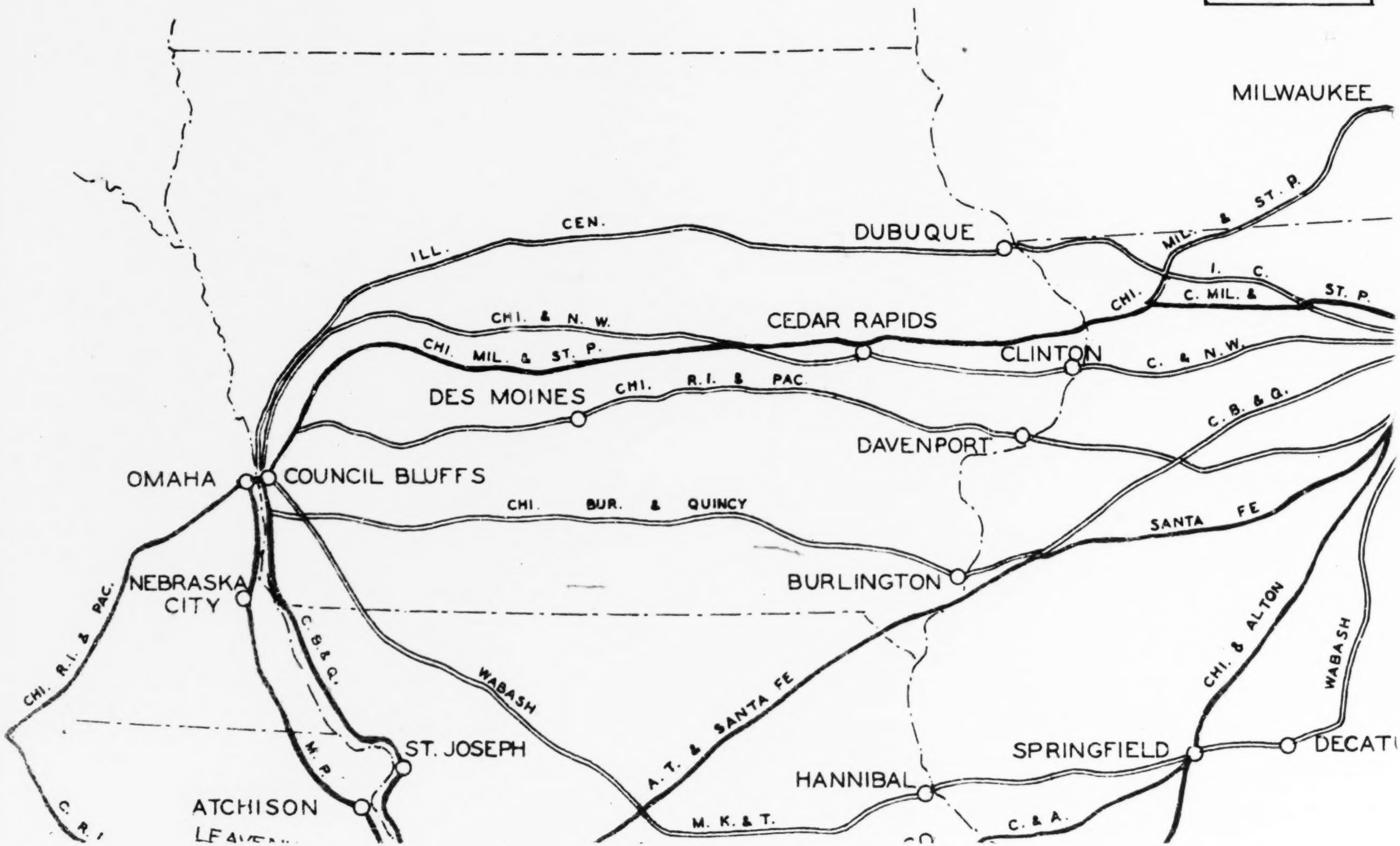
SPRINGFIELD
715
KANSAS CITY BOARD OF TRADE

PLATE II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CHI. MIL. & ST. P.
CLINTON
C. & N. W.
DES MOINES
CHI. R. I. & PAC.
C. B. & Q.
DAVENPORT
OMAHA
COUNCIL BLUFFS
CHI. BUR. & QUINCY
SANTA FE
BURLINGTON
NEBRASKA CITY
CHI. R. I. & PAC.
C. B. & Q.
WABASH
CHI. & ALTON
WABASH
A. T. & SANTA FE
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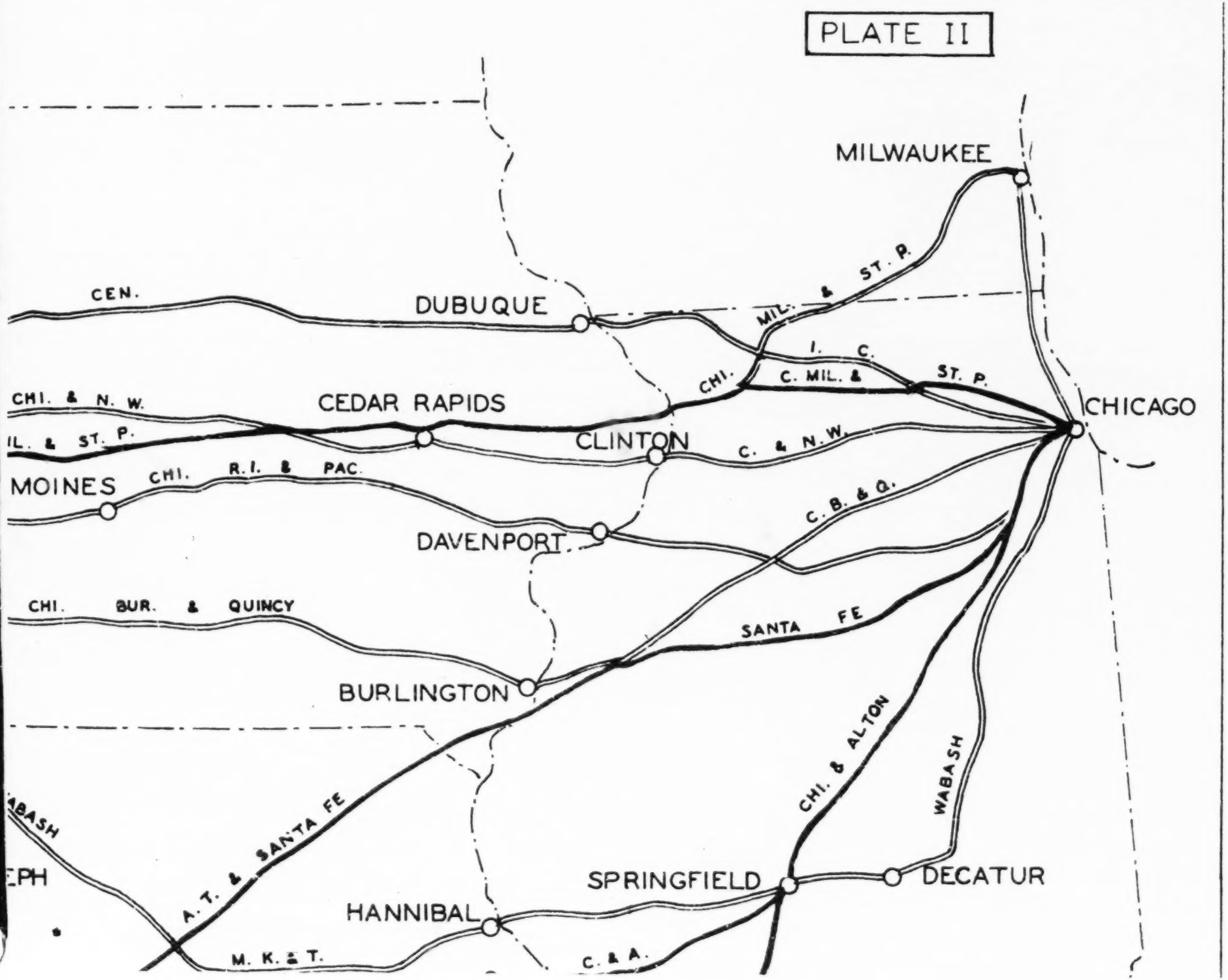
C. & A.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CHI. & N. W.
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CHICAGO
IL. & ST. P.
CLINTON
C. & N. W.
MOINES
CHI. R. I. & PAC.
C. B. & Q.
DAVENPORT
CHI. BUR. & QUINCY
SANTA FE
BURLINGTON
CHI. & ALTON
WABASH
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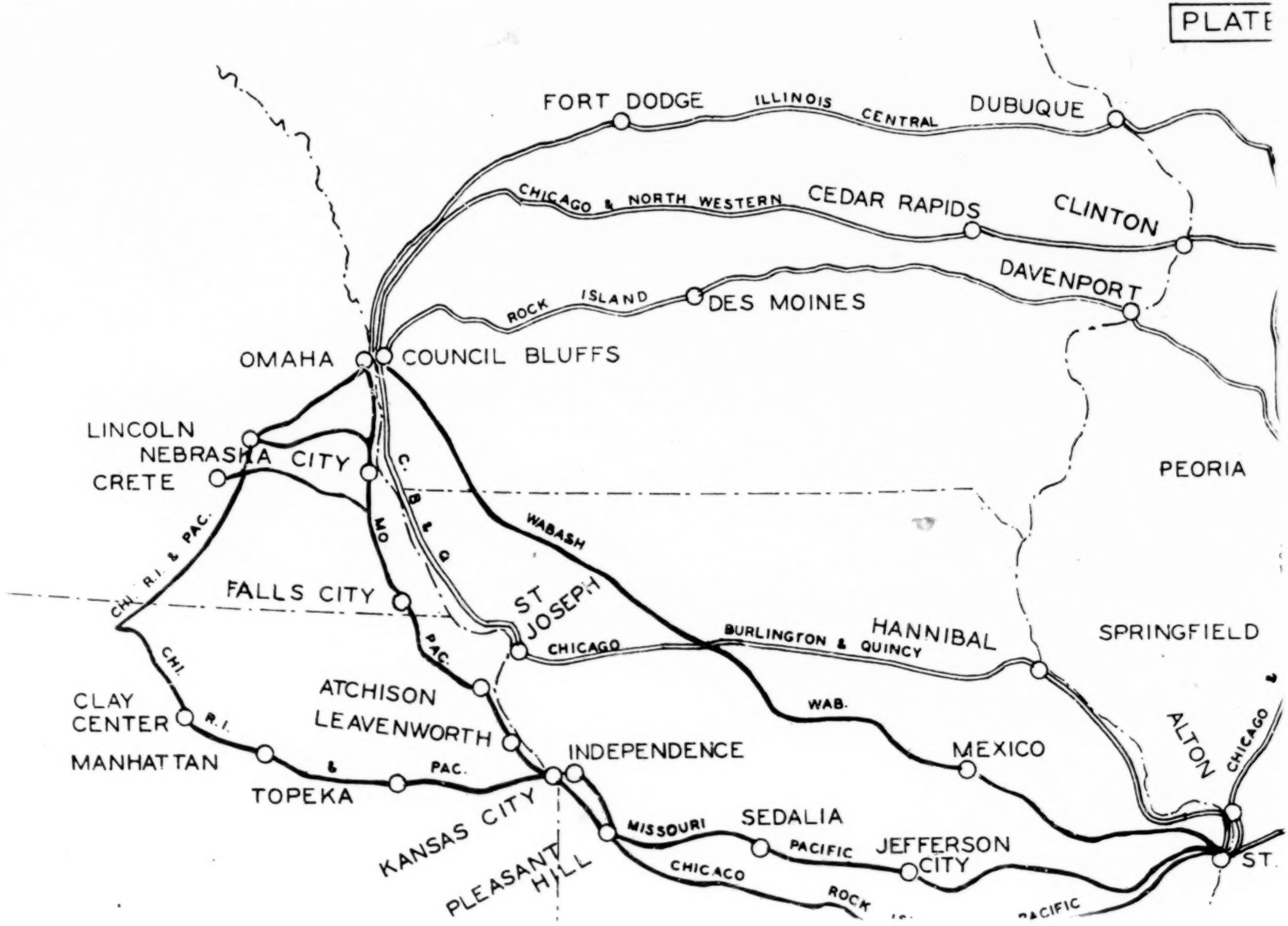
DECATUR
HANNIBAL
M. K. & T.
C. & A.

PLATE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CLINTON
DAVENPORT
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OMAHA
COUNCIL BLUFFS
LINCOLN
NEBRASKA CITY
CRETE
C. B. & Q.
MO.
WABASH
CHI. R.I. & PAC.
FALLS CITY
ST JOSEPH
CHICAGO
BURLINGTON & QUINCY
HANNIBAL
SPRINGFIELD
CHI.
PAC.
CLAY CENTER
R.I.
ATCHISON
LEAVENWORTH
WAB.
ALTON
CHICAGO &
MANHATTAN
&
PAC.
TOPEKA
INDEPENDENCE
MEXICO
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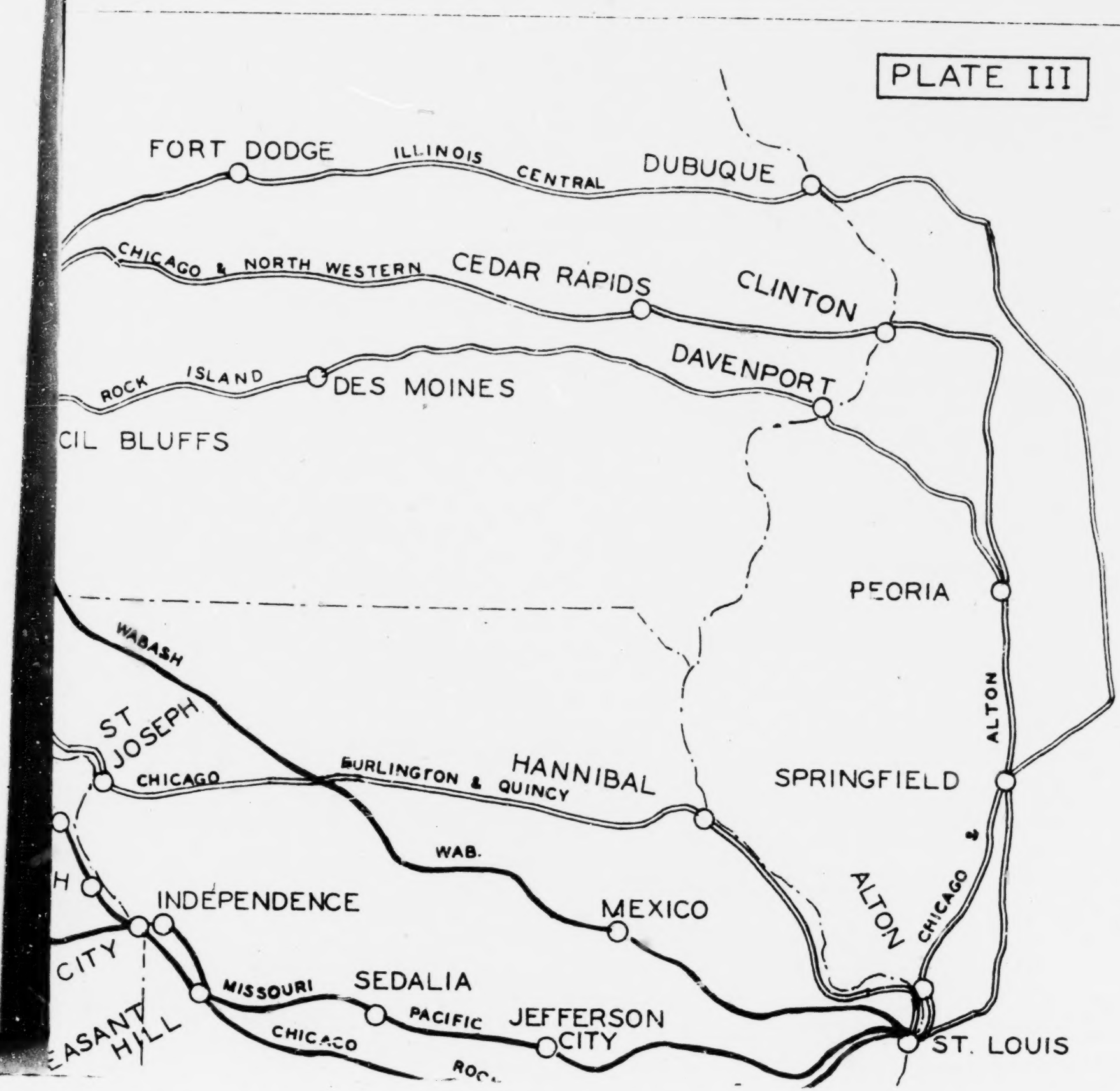
ROCK
PACIFIC
PEORIA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ILLINOIS CENTRAL
DUBUQUE
CHICAGO & NORTH WESTERN
CEDAR RAPIDS
CLINTON
ROCK ISLAND
DES MOINES
DAVENPORT
CIL BLUFFS
PEORIA
WABASH
ST JOSEPH
CHICAGO
BURLINGTON & QUINCY
HANNIBAL
SPRINGFIELD
ALTON
WAB.
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CITY
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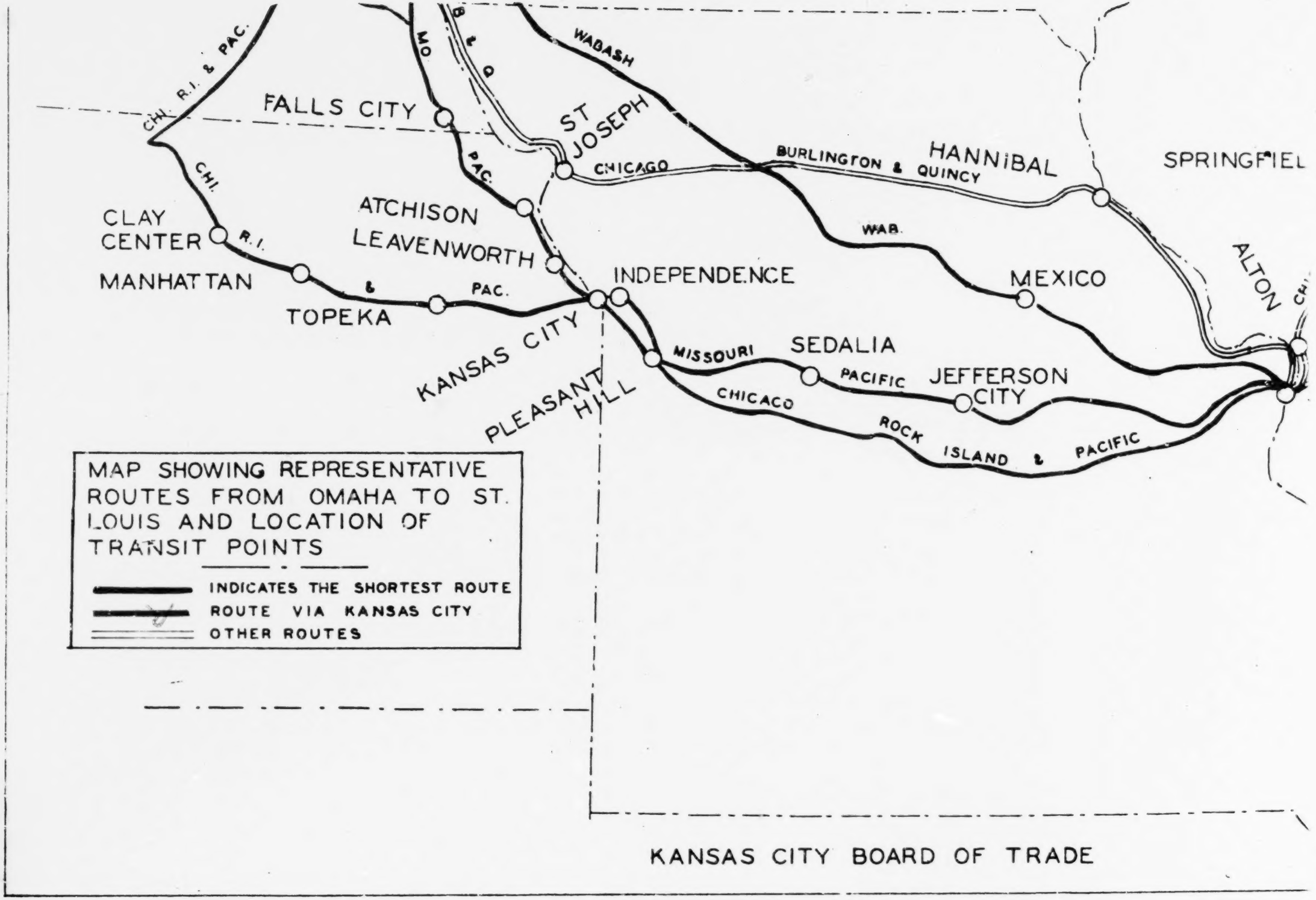
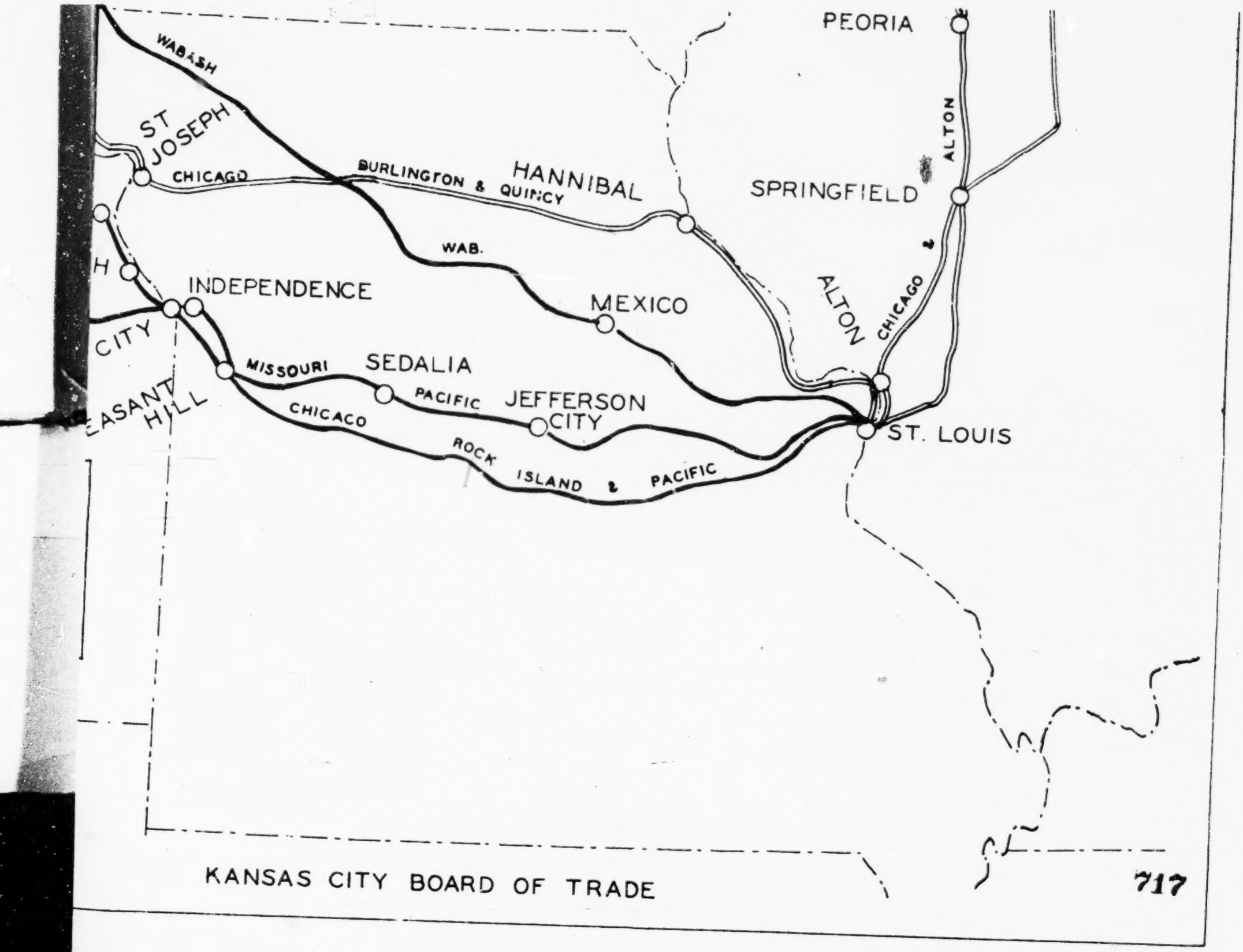
JEFFERSON CITY
CHICAGO
ST. LOUIS



KANSAS CITY BOARD OF TRADE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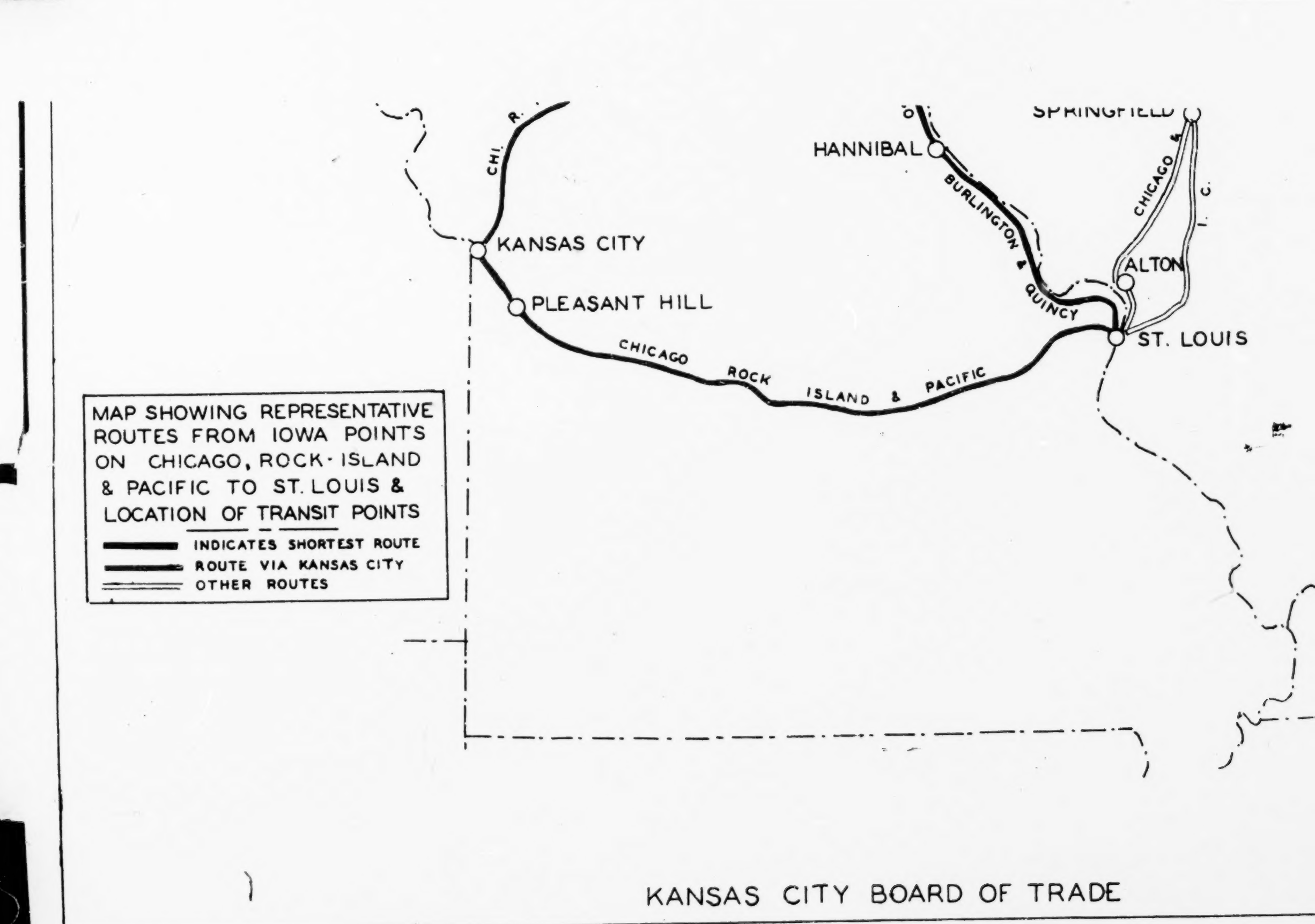
CHICAGO
ROCK ISLAND & PACIFIC


CHI. R.
HANNIBAL
SPRINGFIELD
CHICAGO &
I. C.
BURLINGTON & QUINCY
KANSAS CITY
ALTON
PLEASANT HILL
ST. LOUIS
CHICAGO ROCK ISLAND & PACIFIC
MAP SHOWING REPRESENTATIVE ROUTES FROM IOWA POINTS ON CHICAGO, ROCK-ISLAND & PACIFIC TO ST. LOUIS & LOCATION OF TRANSIT POINTS
INDICATES SHORTEST ROUTE
ROUTE VIA KANSAS CITY
OTHER ROUTES

CHI. BUR. & QUINCY

TOPEKA

KANSAS CITY

SEDALIA

SALINA

MO. PAC.

M. K. & T.

ST. L

JEFFERSON CITY

C. R. I. & P.

CLINTON

HUTCHINSON

WICHITA

R. I. & PAC.

MO. KAN. & TEX.

SAN FRANCISCO

WELLINGTON

SPRINGFIELD

ST. LOUIS &

ENID

CHI. R. I.

OKLAHOMA CITY

MUSKOGEE

FORT SMITH

MO. PAC.

M. P.

ST. L. & S. F.

C. R. I. & P.

M. K. & T.

ST. L. & S. F.

LITTLE ROCK

PINE BLUFF

WICHITA FALLS

DENISON

ST. L. & S. W.

ST. L. S. W.

TEXARKANA

M. P.

I. C.

T. & P.

C. R. I. & G.

DALLAS

AGO

SPRINGFIELD

HANNIBAL

CHICAGO &

I. C.

BURLINGTON & QUINCY

ALTON

ST. LOUIS

SAS CITY

LEASANT HILL

CHICAGO ROCK ISLAND & PACIFIC

V.

719

KANSAS CITY BOARD OF TRADE

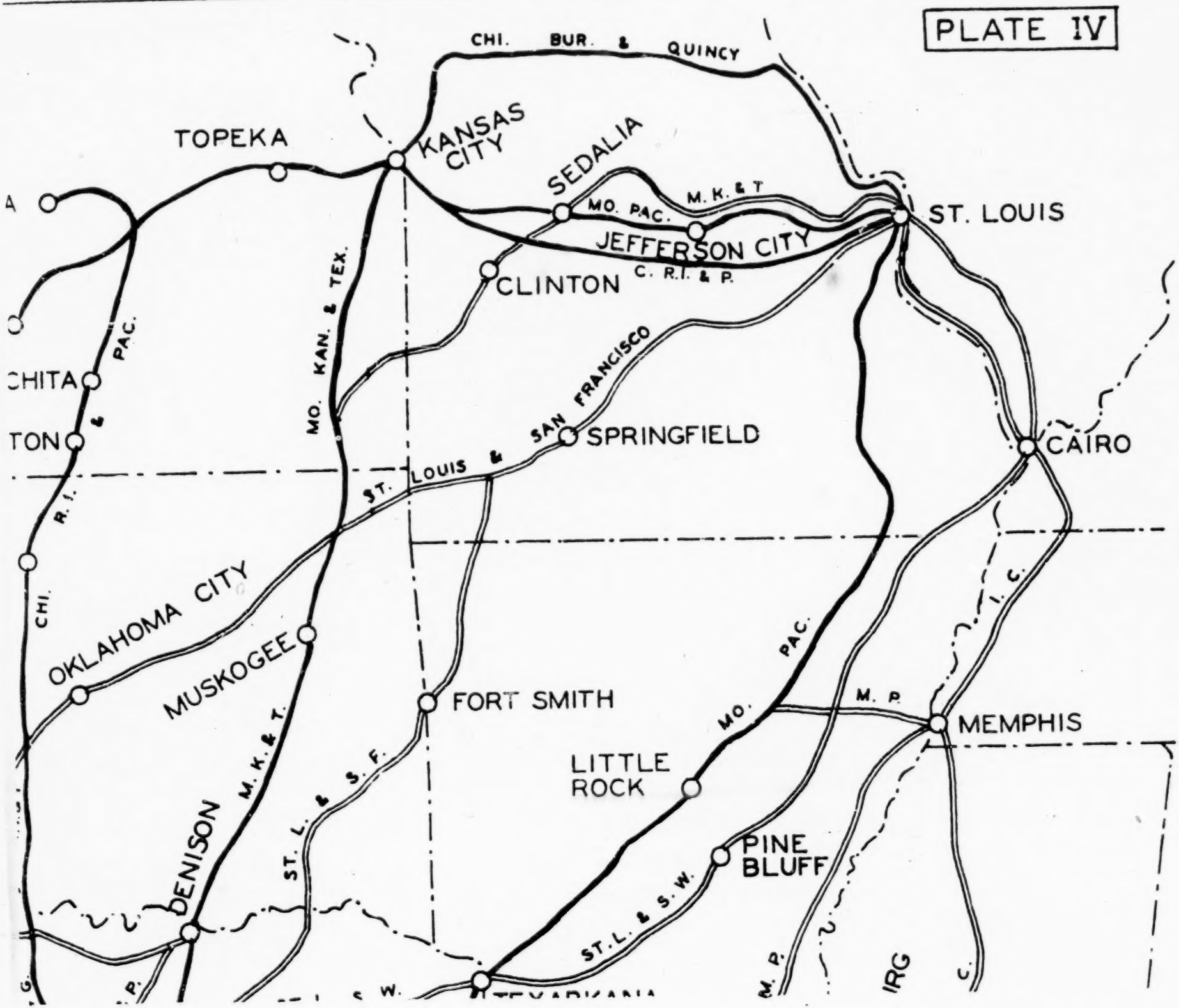


PLATE IV
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M. K. & T
ST. LOUIS
JEFFERSON CITY
C. R. I. & P.
CLINTON
MO. KAN. & TEX.
SAN FRANCISCO
SPRINGFIELD
CAIRO
ST. LOUIS &
CHI. R. I. & PAC.
OKLAHOMA CITY
MUSKOGEE
FORT SMITH
MO. PAC.
M. P.
MEMPHIS
I. C.
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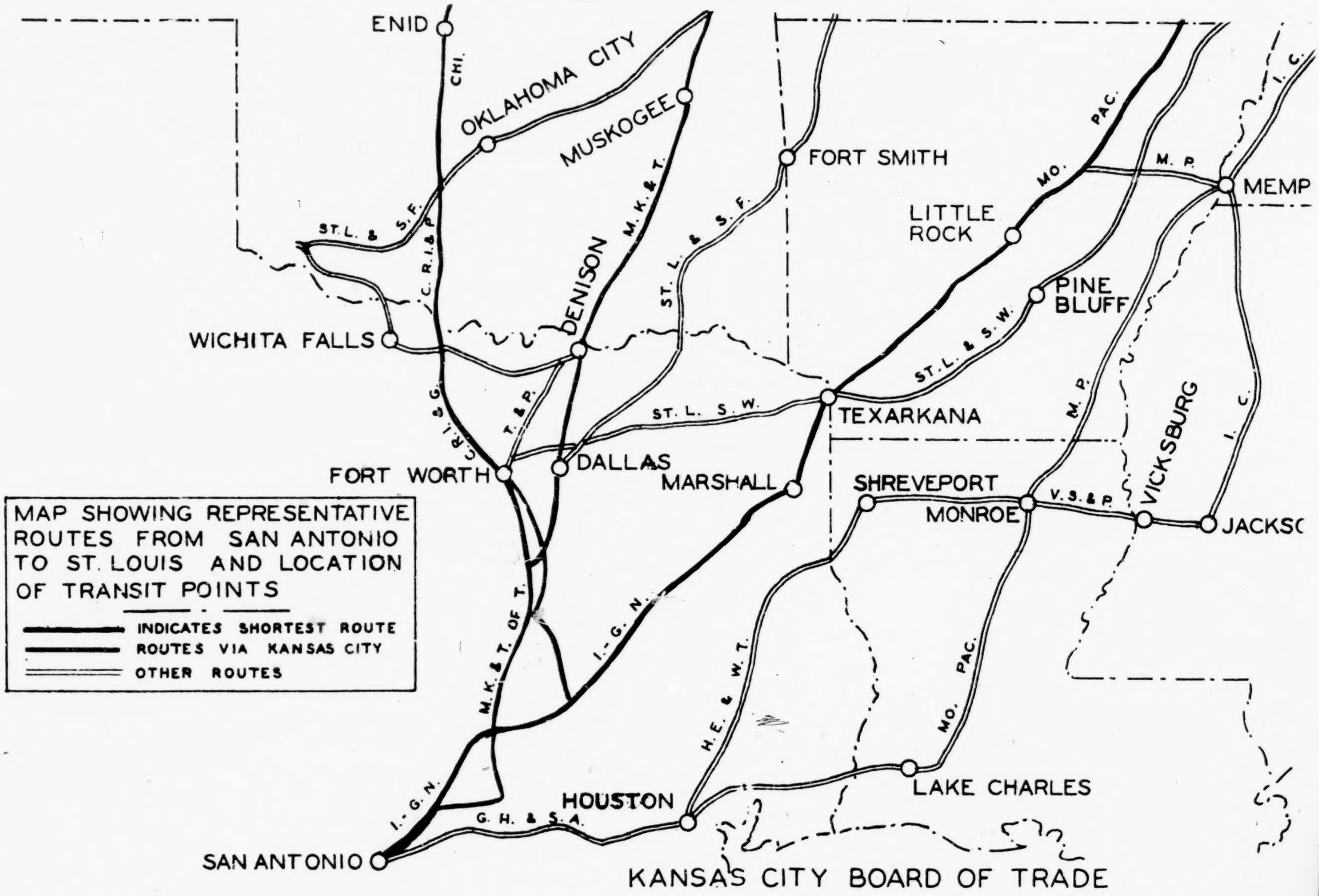
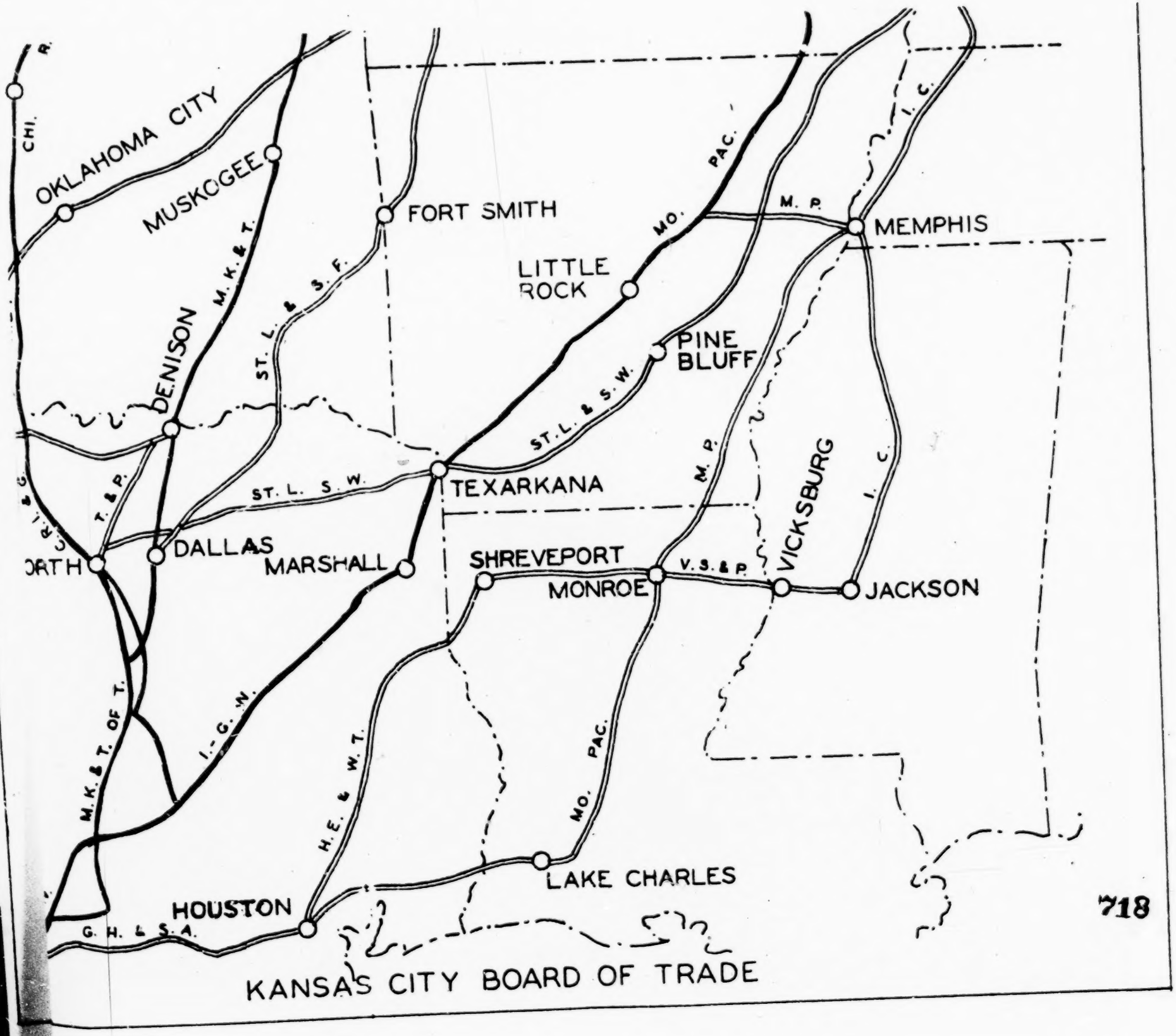
IRG
C.



MAP SHOWING REPRESENTATIVE ROUTES FROM SAN ANTONIO TO ST. LOUIS AND LOCATION OF TRANSIT POINTS

INDICATES SHORTEST ROUTE
ROUTES VIA KANSAS CITY
OTHER ROUTES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MUSKOGEE
DENISON
M. K. & T.
FORT SMITH
ST. L. & S. F.
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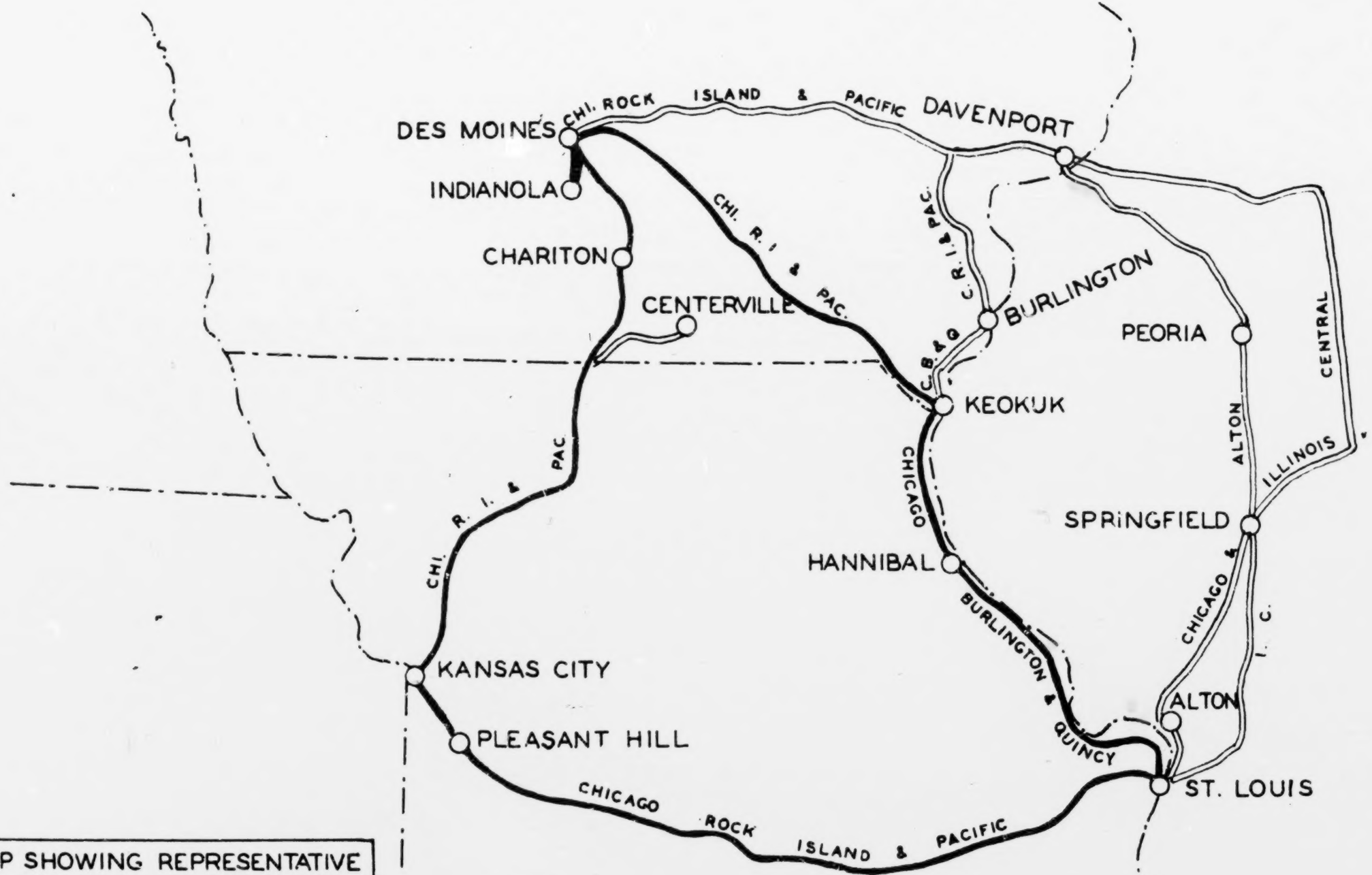
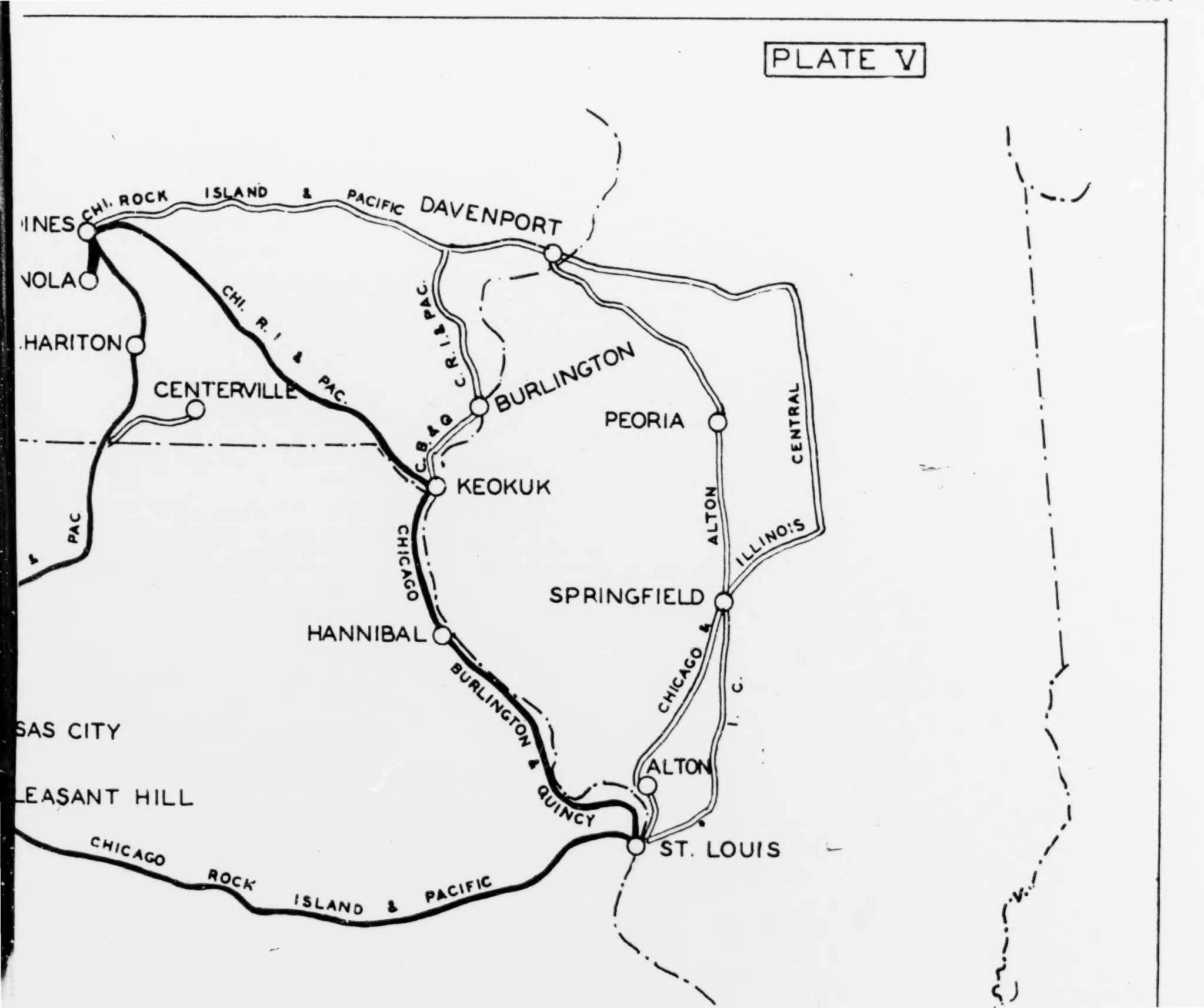
I. C.
MEMPHIS
LITTLE ROCK
PINE BLUFF
ST. L. & S. W.
T. & P.
ST. L. S. W.
TEXARKANA
M. P.
VICKSBURG
I. C.
DALLAS
MARSHALL
SHREVEPORT
V. S. & P.
MONROE
JACKSON
M. K. & T. OF T.
I. G. N.
H. E. & W. T.
MO. PAC.
LAKE CHARLES
HOUSTON
G. H. & S. A.
718
KANSAS CITY BOARD OF TRADE

PLATE



MAP SHOWING REPRESENTATIVE ROUTES FROM IOWA POINTS ON CHICAGO, ROCK-ISLAND & PACIFIC TO ST. LOUIS &

PLATE V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DAVENPORT
NOLA
HARITON
CENTERVILLE
CHI. R. I. & PAC.
C. R. I. & PAC.
C. B. & Q.
BURLINGTON
PEORIA
CENTRAL
KEOKUK
ALTON
ILLINOIS
& PAC
CHICAGO
SPRINGFIELD
HANNIBAL
BURLINGTON & QUINCY
CHICAGO &
I. C.
SAS CITY
ALTON
LEASANT HILL
ST. LOUIS
CHICAGO ROCK ISLAND & PACIFIC

[fol. 720] STIPULATION OF COUNSEL

It is stipulated that the foregoing is a full, true and correct transcript of the proceedings (other than the arguments) before the specially-constituted District Court on November 11, 1940.

M. W. Borders, Counsel for Plaintiffs. Smith R. Brittingham, J. Stanley Payne, Counsel for United States and Interstate Commerce Commission, Defendants.

Filed in the United States District Court May 8, 1941.

[fol. 721] IN UNITED STATES DISTRICT COURT

COMPLAINANTS' REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May 20, 1941

Complainants respectfully request the court to make the following findings of fact and conclusions of law.

Findings of Fact

The Court finds:

1. That it appears from the Commission's reports and orders herein that the orders which Complainants seek to set aside, annul and enjoin, provide certain rates and practices which apply to and directly affect the Complainants in the conduct of their businesses.

2. That it appears from the record, and the Commission's reports and orders herein, that the orders which Complainants seek to enjoin, annul and set aside compel Complainants to pay substantially higher charges than their competitors are required to pay for the same services and Complainants and the markets where they have their places of business are materially damaged and injured thereby.

[fol. 722] 3. That it appears from the Commission's reports and orders herein that such orders require Complainants and others doing business at the following primary markets: Kansas City, Missouri-Kansas; Omaha, Nebraska; Minneapolis, Minnesota; Atchison and Leavenworth, Kansas; St. Louis and St. Joseph, Missouri, when transit is

taken at such markets, to pay combinations of rates the totals of which are in numerous instances substantially higher than their competitors are required to pay when transit is taken at numerous interior points, although the shipments are from the same origins to the same destinations and although the transportation service and the cost thereof and all service incident to transit, including the recording of freight bills, keeping of records, and all other incidents of the transit operation and the cost thereof are the same or no greater, the only difference being that in one case transit is taken at an interior point, while in another case transit is taken at one of the aforementioned primary markets.

4. That it appears from the Commission's reports that the entire transportation service and all the services incident to transit, including the recording of freight bills, keeping of records and all other incidents of the entire transaction of shipment to and from the primary markets are the same whether the outbound shipment is at the transit balance or the proportional rate.

5. That it appears from the Commission's reports and orders that the Commission found the following general differences between transit under the through rates and transit under the rate-break combinations: That the combinations did not include limitations on out-of-line and [fol. 723] back-haul movements which the Commission said were usually found in the through rates, that such combinations did not require that outbound movements be held to the lines of the inbound carriers which the Commission said is usually required in through rates and that the components of the rate-break are separately published; and that the Commission said that the effect of such differences, when taken together with the larger number of carriers found converging inbound to and radiating outbound from rate-break markets and the location of such markets gave such markets an advantage in that they drew grain from a greater territory and possessed a greater choice of outbound carriers and that because of the nature of such markets as price registering markets the published constant factor of proportional rates was a benefit to such price registering markets.

The court further finds that it appears from the Commission's reports and orders that the breaking of rates

with such advantages as were found by the Commission to exist at rate-break markets and which are mentioned above, have been in existence at primary markets for many years prior to the grain cases; that the differences in tariff provisions and the advantages possessed by rate-break markets are not the effect or result of the form of tariff construction, but that on the contrary such differences in tariff provisions are the result of the adjustment of tariff provisions to natural factors and conditions at the various interior and rate-break markets and that the breaking of rates was and is the result of carrier competition at such markets due to the great amount of grain traffic available for transportation at such markets because of their loca-
[fol. 724] tion with respect to grain producing areas and the principal consuming sections and their facilities for handling, marketing, milling, storing and shipping grain and its products.

The court further finds that the breaking of rates at the primary markets is a natural development due to natural conditions and advantages of such markets and the court finds that the Commission has held in numerous cases that such advantages as flow from the rate-break do not give rate-break markets an undue preference over other interior points that do not have similar advantages of location and facilities.

6. That it appears from the Commission's reports that its orders which the Complainants seek to set aside, annul and enjoin, were based in large part upon the Commission's belief that it had the power to put interior points on a more favorable transit basis and permit them to transit on materially lower rates than primary markets because of the alleged advantages possessed by rate-break markets mentioned in the foregoing finding No. 5.

7. That it appears from the Commission's reports and orders and that it held that a difference in treatment of rate-break markets and interior points on routes passing through rate-break markets would have to rest upon a substantial difference in conditions between them, but that the Commission did not find any difference in the transportation service, including the transit service or the cost thereof or any other facts or transportation conditions constituting such substantial difference.

8. That it appears from the Commission's reports and orders that one of the principal grounds for the Commis- [fol. 725] sion's finding of a difference in conditions between interior and rate-break markets was the finding that transit operators at rate-break markets possessed a greater choice of outbound carriers from such markets; that it appears from the Commission's reports that transit operators at interior markets between the country origins and rate-break markets have the same choice of outbound carriers from such markets as do transit operators at such markets, the only difference being that the operators at interior points do not have a like volume of grain available.

9. That it appears from the Commission's reports that one of the principal reasons given by the Commission as the basis of its order requiring that the rate-break combinations be the exclusive basis of charge when transit is taken at primary markets was the possibility of switching of billing and substitution of tonnage at such markets, but that it appears from the Commission's said reports and orders that such practice is not limited to rate-break markets, but exists at interior markets as well.

10. That it appears from the Commission's reports and orders that the orders of the Commission wherein Complainants were denied relief and their complaints dismissed were based in large part upon the Commission's finding that to grant such relief would seriously disturb and disrupt the rate structure and upon its ruling that this was a good and sufficient reason for denying such relief and that undue reliance was put upon this position to the exclusion of other issues essential to the proper determination of the comp'·ints.

11. That it appears from the Commission's reports and orders that the orders of the Commission wherein Com- [fol. 726] plainants were denied relief and their complaints dismissed were based in large part upon the Commission's finding that to grant such relief would reestablish the dual system of rates and upon its ruling that this was a good and sufficient reason for denying such relief and that undue reliance was put upon this position to the exclusion of other issues essential to the proper determination of the complaints.

12. That it appears from the Commission's reports and orders that the Commission has control over each element

of every rate that might be prescribed to satisfy the complaints and that accordingly to grant Complainants relief would not disrupt the rate structure and would not reestablish the objectionable features of the dual system.

13. That it appears from the Commission's reports and orders that the orders of the Commission, wherein Complainants were denied relief and their complaints dismissed, were based in large part upon the Commission's finding that to grant such relief would impose an additional burden upon and reduce the revenue of the carriers and upon its ruling that this was a good and sufficient reason for denying such relief and that undue reliance was put upon this position to the exclusion of other issues essential to the proper determination of the complaints.

14. That it appears from the Commission's reports and orders that the orders of the Commission, wherein Complainants were denied relief and their complaints dismissed, were based in large part upon the Commission's finding that the rate-break markets and interior transit points were merely [fol. 727] accorded the benefit of their respective forms of transit and upon its ruling that the cancellation of transit at points other than rate-break markets on routes passing through rate-break markets would unduly prejudice such points and unduly prefer other interior transit points on other routes.

15. That it appears from the Commission's reports that the Commission held that the advantage given to interior points on rate-break routes should not be removed because Complainants were already under a competitive disadvantage with interior points on other than rate-break routes and the court finds that such holding contributed to the Commission's orders wherein it denied Complainants relief and dismissed their complaints.

16. That it appears from the Commission's reports that the Commission considered the issue as one of whether transit should be allowed to rate-break points rather than whether rate-break points were entitled to transit on the same basis as other points, and that one of the reasons it denied Complainants any relief was because it was the general policy of the Commission to refuse to extend the transit privilege and the court further finds that such holding contributed to the Commission's orders wherein it denied Complainants relief and dismissed their complaints.

17. That it appears from the Commission's reports that it held that its granting of the permissive order in 223 I. C. C. 235 was due to "emergency conditions in the grain trade" when in fact it appears from the face of such opinion that this was not the fact and the court finds that such holding contributed to the Commission's orders wherein it [fol. 728] denied Complainants relief and dismissed their complaints.

18. That it appears from the Commission's reports and orders that the rates upon which Complainants and other shippers at rate-break markets are required by the Commission's orders to transit are unjust and unreasonable.

19. That it appears from the Commission's reports and orders that the rates upon which Complainants and other shippers at rate-break markets are required by the Commission's orders to transit as compared with the rates upon which Complainants' competitors at interior points are permitted to transit subject the Complainants to unjust discrimination.

20. That the rates upon which Complainants and other shippers at rate-break markets are required by the Commission's orders to transit, as compared with the rates upon which Complainants' competitors at interior markets are permitted to transit, subject the Complainants to undue and unreasonable prejudice and disadvantage.

Conclusions of Law

The Court declares the law to be that:

1. Complainants have a sufficient interest to maintain this suit and have sustained injury and damage.

2. The orders of the Interstate Commerce Commission which Complainants seek to set aside, annul and enjoin, subject the Complainants to rates and practices which are unjust and unreasonable under Section 1 (5) of the Interstate Commerce Act. (49 U. S. C. A. 1 (5))

3. The orders of the Interstate Commmerce Commission which Complainants seek to set aside, annul and enjoin subject the Complainants to unjust discrimination in viola- [fol. 729] tion of Section 2 of the Interstate Commerce Act. (49 U. S. C. A. 2)

4. The orders of the Interstate Commerce Commission which Complainants seek to set aside, annul and enjoin subject the Complainants and the transit points where they have their places of business to undue and unreasonable prejudice and disadvantage and give to their competitors and to numerous interior transit points an undue and unreasonable preference and advantage in violation of Section 3 (1) of the Interstate Commerce Act. (49 U. S. C. A. 3 (1))

5. The Commission, in fixing rates and practices which violate Sections 1, 2 and 3 (1) of the Interstate Commerce Act, exceeded its powers and violated the provisions of Section 15 (1) of the Interstate Commerce Act. (49 U. S. C. A. 15 (1))

6. The charging of higher rates or allowance of more favorable transit practices to some shippers than to others under substantially similar circumstances is a violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act; and differences in rates or practices are unlawful unless justified by a difference in the transportation services rendered or the cost thereof or by other transportation conditions. It appears from the face of the Commission's reports and orders herein that there was no difference in the transportation services rendered to Complainants and to their competitors at interior points or the cost thereof and that the differences relied upon by the Commission to support its difference in treatment were the result of the adjustment of tariffs to natural conditions at interior and [fol. 730] primary markets and are not differences in transportation conditions and are insufficient as a matter of law to justify the difference in treatment of interior and rate-break markets prescribed by the Commission.

7. The Commission does not have power to offset and equalize any natural advantages possessed by the primary rate-break markets by granting transit to interior points on a more favorable basis than to such rate-break markets; that the Commission's orders herein complained of have that effect and are the result of the Commission's unlawful exercise of its power and are null and void.

8. The following differences, found by the Commission, between rate-break combinations and through rates, to-wit: That the combinations did not include limitations on out-of-

line and back-haul movements which the Commission said were usually found in the through rates; that such combinations did not require that outbound movements be held to the lines of the inbound carriers which the Commission said is usually required in through rates; and that the components of the rate-break are separately published; are insufficient in law to support a difference in treatment between rate-break and interior markets and the Commission exceeded its powers and erroneously and unlawfully sought to equalize natural advantages of the primary rate-break markets by holding that the aforesaid differences in tariff provisions should be taken and considered together with the fact that a large number of carriers are found converging inbound to and radiating outbound from rate-break markets and with the location and nature of the markets and that when so considered there were advantages in the rate-break markets which justified a difference in treatment of rate-break and interior points.

[fol. 731] 9. The alleged differences found by the Commission between rate-break markets and interior points on routes passing through rate-break markets were not substantial and are not sufficient in law to support a difference in treatment between such interior and rate-break points.

10. It was insufficient in law to constitute a basis for denying Complainants relief that granting such relief would disturb and disrupt the rate structure.

11. It was insufficient in law to constitute a basis for denying Complainants relief that granting such relief would reestablish the dual system of rates.

12. It was insufficient in law to constitute a basis for denying Complainants relief that granting such relief would impose an additional burden upon and reduce the revenue of the carriers.

13. It was no legal basis for denying Complainants any relief against interior points on rate-break routes that Complainants would continue to be under a competitive disadvantage from other interior points.

14. The general policy of the Commission against the extension of transit privileges was inapplicable in the instant case.

15. The Commission's orders complained of herein, although they may appear to be within the form of its delegated powers, are so arbitrary, unjust and unreasonable as to be null and void.

16. The findings of the Commission of the absence of unreasonableness, unjust discrimination and undue prejudice are based upon improper rules and erroneous applications of the law, insufficient findings of fact, and are in-
[fol. 732] sufficient to support its orders complained of herein.

17. The Complainants are entitled to an order enjoining, setting aside and annulling the orders of the Commission herein complained of, in so far as they require or permit a basis of transit at the rate-break markets different from the basis of transit at competing interior or intermediate points.

—— ——, Attorneys for Complainants.

Copy of requested findings and conclusions submitted by Complainants at time cause was heard on November 11th, 1940 and filed at Complainants' request this 20th day of May, 1941.

J. C. Collet, Dist. Judge.

[File endorsement omitted.]

[fol. 733] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

No. 555

THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, et al., Complainants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA et al., Interveners

Appearances:

M. W. Borders and Wilfred Wimmell, Kansas City, Mo., and Samuel J. Wettrick, Chicago, Illinois, attorneys for Complainants.

Thurman Arnold, Assistant Attorney General, Smith R Brittingham, Jr., Special Assistant to the Attorney General, Elmer B. Collins, Special Assistant to the Attorney General and Richard K. Phelps, Assistant United States Attorney, attorneys for United States, defendant.

J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Commission and Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, attorneys for defendant Interstate Commerce Commission.

Alvin C. Strutz, Attorney General of North Dakota, and James M. Hanley, Commerce Counsel of the Board of Railroad Commissioners of the State of North Dakota, attorneys for the Board of Railroad Commissioners of the State of North Dakota, et al., interveners.

J. W. Taylor, Attorney General and D. W. Thomas, Assistant Attorney General of the State of Idaho, attorneys [fol. 734] for the Public Utilities Commission of the State of Idaho, and Idaho State Grange, Inc., Interveners.

Ralph W. Currie, Frank A. Leffingwell and V. E. Phillips, attorneys for The Texas Industrial Traffic League, Fort Worth Grain and Cotton Exchange, and Tex-O-Kan Flour Mills Company, Interveners.

Harrison J. Freebourn, Attorney General of the State of Montana, and Emmett C. Angland, Counsel for the Board of Railroad Commissioners, attorneys for the Board of Railroad Commissioners for the State of Montana, interveners.

Before Thomas, Circuit Judge, and Otis and Collet, District Judges

OPINION—Filed January 21, 1941

COLLET, District Judge, delivered the opinion of the Court:

Action to enjoin the enforcement of an order of the Interstate Commerce Commission affecting railroad grain rates. Plaintiffs are the Board of Trade of Kansas City, Missouri, engaged in the business of buying, selling, processing and handling grain, flour, mill feeds, mixed feeds and other products of grain at that city; certain individuals and corporations engaged in a similar business at Kansas City, Missouri; the Minneapolis Traffic Association and private business interests engaged in a like business at Minneapolis, Minnesota; the Omaha Grain Exchange and private busi-

ness interests engaged in the same line of endeavor at Omaha, Nebraska; the St. Joseph Grain Exchange and individual business interests engaged in the grain business at St. Joseph, Missouri, and certain individuals interested in [fol. 735] a like business at Leavenworth, Kansas, and Atchison, Kansas.

Plaintiffs bring this action for themselves and in behalf of others similarly interested at Kansas City, Missouri, and Kansas City, Kansas; St. Louis, Missouri; Omaha, Nebraska; Minneapolis, Minnesota; St. Joseph, Missouri; Atchison, Kansas, and Leavenworth, Kansas, which centers are known as and will hereafter be referred to as "primary" or "rate-break" markets.

The defendants are the United States of America and the Interstate Commerce Commission. Interested parties intervening as parties defendant with the object of sustaining the order of the Interstate Commerce Commission are the Board of Railroad Commissioners of the State of North Dakota and various North Dakota interests; the Public Utilities Commission of the State of Idaho and the Idaho State Grange, Inc.; the Texas Industrial Traffic League; the Fort Worth Grain and Cotton Exchange and Tex-O-Kan Flour Mills Company, and the Board of Railroad Commissioners of the State of Montana represented by the Attorney-General of that State.

As required by the Judicial Code, Title 28 U. S. C. A. Sections 41(28), 43, 45, 46, 47 and 48, a three-judge statutory court was convened and the cause heard on the merits November 11, 1940.

Pursuant to a Joint Resolution of Congress of January 30, 1925, known as the Hoch-Smith Resolution, 43 Stat. 801, 49 U. S. C. A. Sec. 55, the Commission embarked upon a general investigation of the rate structure of common car- [fol. 736] riers in the Western District therein defined. The Commission found in existence two basic methods for permitting the temporary stopping of grain for milling and other purposes at intermediate points between the point of origin and point of final destination without requiring the payment of the comparatively high local rates for each of the two segments of the transportation. Those two methods are known as the through rate with transit and the proportional rate. The issues here involved necessitate a clear understanding of these rates.

The through rate with transit, or "transit" as it is frequently referred to, may best be explained in the language of the Commission:

"Transit permits of the drawing of grain into the transit point, and of the later outbound shipment of an equivalent tonnage of that kind of grain or its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the inbound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the inbound grain (or its equivalent in tonnage) or its products. When the outbound shipment is tendered the inbound freight bill is surrendered as authority for the charging on the outbound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the inbound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination." 215 I. C. C. 83, l. c. 90.

The proportional rate or "rate-break combination" as it is frequently designated, is peculiar to the primary or [fol. 737] rate-break markets where it alone applies. The rate itself is the average of all transit balances from a primary market to a final destination point. It is the substantial equivalent of the transit balances between each of the primary markets and the various final destination points to which it is made applicable. Grain dealers at the primary markets could, therefore, know in advance of the purchase of grain at its origin exactly what the rate would be from each primary market to the principal final destination points to which the proportional rate applies regardless of what the transit balance of the through rate from the particular point of origin to the final destination might be.

Speaking in general terms, the Commission found that the availability of both methods of transit to the primary markets resulted in undue and unfair discrimination in favor of the primary markets over intermediate interior points not possessing the proportional rates, confusion and unsettlement of grain prices, and undue loss of revenues to the carriers. It concluded that both methods of transit should not be available to any market, and finding that the proportional rate was more advantageous to the primary markets than the through rate with transit, it reduced the

proportional rate and ordered the discontinuance of transit privileges under through rates at the primary markets when the reshipment was between a primary market and a final destination point having an established proportional [fol. 738] rate. It did not abolish the privilege of transit on through rates when the reshipment was to a point not having a proportional rate (205 I. C. C. 301). At the time of the original consideration of the rate situation the Commission was of the opinion that it was necessary to eliminate transit privileges on through rates at intermediate interior points other than primary markets when those intermediate points were located upon the line between primary markets and final destination points to which proportional rates applied. That order of the Commission (164 I. C. C. 619) was set aside (on other grounds) as a result of the opinion of the Supreme Court in Atchison, Topeka and Santa Fe Ry. Co. v. United States, 284 U. S. 248. Upon reconsideration of the entire question the Commission reiterated, as above noted (205 I. C. C. 301), its conclusion that both proportional rates and transit on through rates should not be available to the same market. It later, however, revised its conclusion as to the necessity of prohibiting transit on through rates at intermediate interior points, the effect of which had been to deprive those points of any substantial transit privileges, and by subsequent order permitted transit under through rates at all interior intermediate points which did not possess the proportional rates.

On complaint of the primary, or rate-break markets, that the deprivation of transit privileges on through rates at those markets was injurious, the Commission (223 I. C. C. 235) granted permission to the carriers to voluntarily [fol. 739] grant transit privileges on through rates at the primary markets for a limited period. The carriers declined upon the general grounds that proportional rates having been decreased at the time the right to the dual system was prohibited at primary markets, the re-establishment of the transit privilege on through rates at primary markets would re-establish the dual system with subsequent loss of revenue which they could not afford. The primary markets then petitioned the Commission for a mandatory order on the carriers to reinstate the transit privilege on through rates at those points. This the Commission denied and permitted the permissible order to expire on the date there-

tofore fixed (229 I. C. C. 9). Thereafter, the plaintiffs herein again petitioned the Commission for modification of its previous order abolishing the dual system and formally requested the re-establishment of transit privileges on through rates. This the Commission denied (231 I. C. C. 793).

The gravamen of the complaint of plaintiffs in the present action is that the order of the Commission denying the primary markets the privilege of having both the transit privilege under the proportional rate and also under the through rate with transit is unreasonable, unfair, unjust and discriminatory.

The plaintiffs assert that orders of the Interstate Commerce Commission will be set aside (1) if in excess or disregard of its delegated powers; (2) if based in whole or in part upon an erroneous construction or application of the law; (3) if based in whole or in part on consideration [fol. 740] of evidence outside of the record; (4) if, although acting within the power of its delegated authority the Commission's action is arbitrary and unreasonable; (5) if not based on evidence or findings based thereon.

Specifically, plaintiffs contend that in the present case:

(1) The findings of the Commission are general and do not find sufficient evidentiary facts upon which the general factual conclusions may be properly based.

(2) The facts found do not authorize the order.

(3) That the order of the Commission is unjust, unreasonable and discriminatory as to the primary markets in violation of the provisions of the Interstate Commerce Commission Act as amended, Title 49 U. S. C. A. Sec. 1, et seq. (which sections are quoted below);[1] and is so arbi-

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[1] "Sec. 1 (5): All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful; • • •

Sec. 2: If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand,

trary and unjust that it exceeds the Commission's powers and is void.

[fol. 741] The Commission's findings in part are:

(1) That the use of transit balances under through rates and the proportional rates out of the same rate-break markets—

(a) tend to disorganize the rate-break combinations,

(b) disorganize the general rate structure,

(c) make uncertain in advance the outbound basis of charge,

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collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

Sec. 3 (1): It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit points, or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 15 (1): Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that

(d) give an undue preference to those having the privilege of both transit balance and proportional rates,

(e) depress the price of grain at the rate-break markets and by direct reflection at the country points, and

(f) reduce the revenue of the carriers.

(2) That the dual system of rates at these markets was an evil requiring a remedy.

(3) That the evils of the dual system cannot be eliminated by abolishing proportional rates on outbound shipments [fol. 742] from the primary markets, nor by abolishing transit on through rates generally; nor by adopting a mileage

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any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property or for the transmission of messages as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation or practice is or will be just, fair and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

basis for all rates, nor by any known and practical means other than the abolishment of the dual system; and

(4) That prescribed through rates based upon flat (or local) rates to the primary markets and proportional rates beyond will be reasonable and fair to all markets; and that overhead through rates through primary markets less than those combinations should be cancelled.

The above summarization of the Commission's findings indicates that it found both specific facts and the ultimate fact which necessarily followed therefrom. It is to be borne in mind that plaintiffs do not question the existence of or sufficiency of evidence to support the factual conclusions. On the contrary, they have apparently conceded [fol. 743] without argument that there was evidence before the Commission on the subject embraced within the Commission's conclusions. The point is, that the findings are not sufficient in themselves upon which the order could legally be based. It may well be asserted that the findings of the Commission to the effect that the possession of both the proportional rate and the through rate with transit by the same market is unreasonable and discriminatory is such a conclusion of fact as was condemned in United States v. C. M. St. P. & P. R. Co., 294 U. S. 499. But the finding of the Commission that the use of transit balances less than proportional rates at the primary rate-break markets tends to disorganize the proportional rates, disorganizes the general rate structures, makes uncertain the basis of charge on outbound shipments, gives a preference (which the Commission concluded was undue) to markets possessing both methods of transit, depresses the price of grain at the primary markets and at country points and reduces the revenues of the carriers, are plain facts from which the Commission concluded a change should be made. The explanation of the Commission's reasons for making the change it did make to correct the factual situation found to exist may be characterized as the Commission's argumentative conclusions but they properly tend to explain the reasoning of the Commission from the evidentiary facts. If evidentiary facts exist to support the Commission's conclusions, we are not here concerned with the correctness of the Commission's reasoning, with the soundness of its conclusions or with any possible inconsistencies with findings [fol. 744] made in other proceedings before it. Virginian

Ry. Co. v. United States, 272 U. S. 658, 665-666. Obviously, the Commission found the necessary facts upon which the conclusion it reached was based.

The second question presented is based upon several arguments, all of which when reduced to their final analysis amount to the simple proposition that the evidentiary facts upon which the Commission's conclusion was based are facts which, under the law, may not constitute the foundation for rate regulation or adjustment. Otherwise stated, plaintiffs contend that the advantages which they had from the dual methods of transit available to them sprang from the geographical location of the primary markets and other natural conditions existing at those markets, such as large grain storing facilities and numerous rail lines, which plaintiffs assert entitle those markets to the advantages of the dual system. For that reason, plaintiffs insist the Commission's conclusion that the dual system should be abolished was based upon facts which, under the law, could not legally justify the order depriving them of the dual system.

It must readily be conceded that the Commission may not equalize unequal natural conditions. Texas & Pacific Ry. Co. v. United States, 289 U. S. 627; Penn. Refining Co. v. West N. Y. & P. R. R. Co., 208 U. S. 208; United States v. Ill. Cent. R. R., 263 U. S. 515; Ellis v. Interstate Commerce Commission, 237 U. S. 434. Academically speaking, it may not give to a community, the geographical location of which [fol. 745] makes it naturally more inaccessible, the same advantages of accessibility to a given point which another community advantageously situated possesses. But the Commission may adjust rates to meet "transportation conditions". That transportation conditions may and should include conditions other than mere operating conditions is apparent from the following cases: Texas & Pacific Ry Co. v. Interstate Commerce Commission, 162 U. S. 197; Ann Arbor Ry. Co. v. United States, 281 U. S. 658; Interstate Commerce Commission v. C. R. I. & P. Ry. Co., 218 U. S. 88.

The establishment of proportional rates at the primary markets was to an extent because of their natural location and the convergence and radiation of rail lines thereat and therefrom. The proportional rate was considered peculiarly appropriate to the natural conditions existing at the primary markets. It was intended to secure to those markets all of the advantages of the through rate with transit to which the primary markets were entitled from that rate

because of their geographical location and natural advantages and the additional advantages inherent in the proportional rates, which additional advantages sprang from natural and geographical considerations. But when the Commission examined the situation resulting from the use of both the transit on through rates and the proportional rates by the same markets it found that the combining of the use of both resulted in advantages to the primary markets which did not flow from their geographical location but [fol. 746] were on the contrary in spite of natural conditions and to the material disadvantage of other markets. That disadvantage may best be explained by a brief illustration. A miller at Independence, Missouri, situated only a short distance from Kansas City, Missouri, purchases grain at its origin at Dodge City, Kansas. He may move that grain to Independence on the local rate from Dodge City to Independence and reship to Chicago for the transit balance of approximately 16 cents. The miller at Kansas City may likewise purchase grain at Dodge City, Kansas, move it to Kansas City on the local rate and reship to Chicago on the proportional rate of 16 cents. If, however, the privilege of utilizing the transit balance on the through rate is available to the miller at Kansas City, Missouri, he may reship from Kansas City to Chicago on the transit balance of the through rate from Omaha to Chicago via Kansas City which is approximately 10 cents, if (as the Commission found was almost always the case) the Kansas City miller had moved a like quantity of grain from Omaha to Kansas City upon the proportional rate of 6½ cents. Thus the Kansas City miller would have a distinct advantage over the Independence miller which the Commission found was not insignificant in practice. Undoubtedly, such a condition must be characterized as a transportation condition which the Commission is authorized to regulate. Even if that were not true, however, the loss of revenue to the railroads resulting from the illustration, the disorganization of the existing[1] proportional rate, and the effect on grain prices are unde- [fol. 747] niably transportation conditions, which the Commission must legally take cognizance of. It must follow, therefore, that the facts upon which the Commission based

[1] See Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476. Compare United States v. Chicago, M. St. P. & P. R. Co., 294 U. S. 499.

its conclusion were not facts which the Commission could not legally consider as a basis of rate regulation.

It is further contended by plaintiffs that the result of the deprivation of transit privileges on through rates at the primary markets is so unreasonable and unjust that it may not stand. The argument is based upon the fact that in some instances a grain dealer or miller at a point substantially the same distance or even at a greater distance from final destination may reship to the latter point on the transit balance for less than the proportional rate now alone available to the primary market. An illustration will again best suffice as an explanation. It is possible for a miller at Independence, Missouri, to purchase grain at Omaha, move that grain to Independence, mill it there and reship it to Chicago for the transit balance of the over-all through rate of 16 cents, whereas if the miller at Kansas City purchases grain at Omaha moves it to Kansas City upon the proportional rate existing between Omaha and Kansas City of 6½ cents and reships to Chicago over the same line which the Independence miller uses, he must in addition pay the proportional rate between Kansas City and Chicago of 16 cents or a total of 22½ cents. Undoubtedly, this situa- [fol. 748] tion discloses a discrimination against Kansas City. The same discrimination would apply to other primary markets using other similar illustrations. Fundamentally, the condition depicted may occur because of the existence of an unusual and unnatural through rate between Omaha and Chicago via Kansas City set up by carriers not having a direct route between Omaha and Chicago in order that they may compete with the direct lines in the movement of grain between those points. Obviously, Kansas City shippers are not entitled because of their geographical location to ship grain from Omaha to Kansas City and thence to Chicago at the same rate as grain is carried from Omaha on a direct line to Chicago. If they move grain from the territory comprising their natural trade territory the proportional rate gives them all and more than the interior points possess with transit on through rates from that area. The question really is whether the availability to interior points of unnatural through rates with transit which are not available to the primary markets is so discriminatory as to render the rate structure unlawful.

Unless the discrimination be undue, unjust, unfair or unreasonable, the courts may not interfere, United States v.

Chicago Heights Trucking Co., 310 U. S. 344, and the Commission's conclusion that the result of the order is not unjust or unreasonably discriminatory, is binding upon the Court unless the Commission has proceeded upon erroneous legal principles or the order is so patently arbitrary that it may not be sustained on any rational theory. Rochester Telephone Corp v. United States, 307 U. S. 125; Interstate [fol. 749] Commerce Commission v. Union Pacific, 222 U. S. 541; Manufacturer's Ry. Co. v. United States, 246 U. S. 457. The legality of the considerations actuating the Commission has heretofore been considered, hence we are now concerned only with the question of unreasonableness.

The Commission supported the reasonableness of the discrimination depicted by the illustration by pointing out that it was necessary to avoid unfairness to interior points such as Independence to make available to them one or the other of the two methods of transit. It was impossible to give them the benefit of the broader benefits incident to the proportional rate because those points did not have the geographical or natural advantages entitling them to the proportional rate. It was impossible to devise a practical rate structure which eliminated all possible minor discriminations. Hence, they must be permitted to transit on through rates or none at all. The Commission found that the granting of the privilege of transit on through rates to interior intermediate points was of no substantial injury to the primary markets because of the insignificant opportunity of the interior points to, by the transit privilege under through rates, compete with the primary markets operating under proportional rates. The facts amply support the Commission in that conclusion. It must follow that the limited privilege extended to the interior points incident to their possession of the right to transit on through [fol. 750] rates is not such an undue, unjust or unfair discrimination as to be so clear and obvious that it may be characterized as illegal.

It must be assumed that should the interior points in some unfor-seen manner be able to utilize their transit privileges in such a manner as to materially equalize or tend to overcome the natural advantages possessed by the

primary markets, the Commission will, upon proper application, adequately meet the situation.

The plaintiffs' bill should be dismissed on the merits.

Seth Thomas, United States Circuit Judge; Merrill E. Otis, United States District Judge; J. C. Collet, United States District Judge.

Dated this 21st day of January, 1941.

[File endorsement omitted.]

[fol. 751] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 21, 1941

Findings of Fact

1

The Interstate Commerce Commission by its order deprives the primary markets at which complainants are located of the right of transit on through rates and gives to those markets the right to transit exclusively on proportional rates.

2

The right to transit on through rates is:

[fol. 752] "* * * The drawing of grain into the transit point, and of the later outbound shipment of an equivalent tonnage of that kind of grain or its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the inbound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the inbound grain (or its equivalent in tonnage) or its products. When the outbound shipment is tendered the inbound freight bill is surrendered as authority for the charging on the outbound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the inbound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination." 215 I. C. C. 83 l. c. 90.

3

Proportional rates apply exclusively to primary markets and are not possessed by any other markets. A proportional rate is a rate which provides a method of transit in the following manner: A shipper at a primary market pays the local or flat rate from the point of origin to the primary market. Upon reshipment to the point of final destination the average of the transit balances from the primary market to the point of final destination, called a proportional rate, is paid for the movement from the primary market to the final destination.

4

Prior to the present order of the Commission, the primary markets possessed the right to transit both under the [fol. 753] through rate with transit and also by the method provided by the proportional rate.

5

The Commission found that the possession by the primary markets of the right to transit by both methods was unfair, discriminatory, unduly depressed the carriers' revenues, and should be discontinued. That conclusion was based upon the following facts found by the Commission:

That the concurrent use of transit balances and the proportional rate at the primary markets—

(a) Disorganized the proportional rates at those markets.

(b) Disorganized the general rate structure existing in the Western Grain area.

(c) Made uncertain in advance the outbound basis of charge from the primary market to the final destination.

(d) Gave an undue and unfair advantage to those having the right to use both the through rate with transit and the proportional rate over those only entitled to use the through rate with transit.

(e) Depressed the price of grain at the primary markets and by direct reflection at the points of origin, and

(f) Unduly reduced the revenue of the carriers.

[fol. 754] 6

The Commission further found that the dual system of rates at the primary markets was an evil requiring a remedy.

7

That the evils of the dual system could not and should not be eliminated by abolishing proportional rates on outbound shipments from the primary markets, nor by abolishing through rates with transit privileges generally, nor by adopting a mileage basis for all rates, nor by any known and practical means other than the abolishment of the dual system at the primary markets.

8

The Commission found that through rates from point of origin to point of final destination through primary markets based upon local or flat rates to the primary markets and proportional rates beyond was reasonable and fair and that through rates with transit balances from the primary markets to points beyond at less than the proportional rates should be cancelled for the reasons stated above.

9

Plaintiffs do not contend that there was no evidence to support these findings of the Commission. It is contended [fol. 755] that these findings are insufficient upon which to base the order directing the elimination of transit balance from primary markets to final destination points less than the proportional rates existing between those points, and that the facts found are not facts which rate regulation may be predicated upon.

10

The order of the Commission gave to all points other than primary markets located on railroad lines which had a through rate applying through the intermediate point, the right of transit on such through rate.

11

The Commission's order gave to the primary markets consisting of Kansas City, Missouri, Kansas City, Kansas, St. Louis, Missouri, Omaha, Nebraska, Minneapolis, Minnesota, St. Joseph, Missouri, Atchison, Kansas, and Leaven-

worth, Kansas, the right to use the proportional rates from those markets to final destination points regardless of the existence or absence of a through rate between the point of origin, the primary market and the final destination point.

12

The order of the Commission prohibited the use at primary markets of the transit privileges under the through [fol. 756] rates when the shipment moved between points having established proportional rates. It did not deprive the primary market of the use of through rates with transit privileges when the shipment was between ultimate termini for which a through rate was established and when there was no proportional rate established between the primary market and the final destination point.

13

The Commission's order in some instances permits shippers by the use of transit on through rates at interior intermediate points other than primary markets to reship to final destination points for less than shippers at primary markets are required to pay under the proportional rate for transportation to the same points of final destination.

14

The Commission found that such discrimination is not undue, unfair or unjust because of the following facts found by the Commission:

(a) It was essential in the public interest that intermediate interior points other than primary markets have some rate under which transit privileges were available.

[fol. 757] (b) That transit under through rates at intermediate interior points other than primary markets had no appreciable effect upon the primary markets.

(c) The allocation of the proportional rate to the primary markets to the exclusion of intermediate interior points, the exclusive use of that rate at the primary markets for shipments where proportional rates were applicable, and the establishment of through rates with transit alone at the intermediate interior markets was the only method by which the grain rate structure could be maintained with fairness and absence of prejudicial discrimination to all markets.

(d) The intermediate interior markets because of their absence of extensive railroad facilities and connections could not utilize the through rate with transit to the material disadvantage of the primary markets.

(e) That no system of rates could be devised which would be absolutely perfect and eliminate all possible discrimination.

(f) That the proportional rates as reduced by the Commission were fair and just rates to the primary markets and the carriers, taking into consideration all factors including [fol. 758] the natural advantages inherent to the primary markets.

Seth Thomas, United States Circuit Judge; Merrill E. Otis, United States District Judge; J. C. Collet, United States District Judge.

Dated this 21st day of January, 1941.

Conclusions of Law

I

The Court may not disturb the conclusion of the Commission that existing rates resulted in unjust discriminations, unreasonable impairment of carriers' revenues, unsettled market conditions and disruption of established rate [fol. 759] structures unless that conclusion finds no support in specific facts which the law authorizes the Commission to take cognizance of, or unless the conclusion and order are based upon an erroneous interpretation or application of the law, or unless the order is so unjust and arbitrary that it may not be sustained on any rational or reasonable theory.

II

The facts found by the Commission in support of its conclusion that transit balances less than applicable proportional rates should be discontinued are sufficiently definite, clear and specific.

III

The Commission may not equalize natural or geographical advantages of shippers by rate regulation.

IV

The conditions which the Commission found to exist and which constituted the factors upon which the order requir-

ing the discontinuance of the dual method of transit was [fol. 760] based, were not natural advantages inuring to the primary markets from natural causes, but were transportation conditions over which the Commission had jurisdiction.

V

The order of the Commission is not void on the ground that it is arbitrarily unjust and discriminatory.

VI

Plaintiffs' bill should be dismissed on the merits. A formal order will be entered hereafter. In the meantime the parties may within ten days from the date hereof submit for the consideration of the Court such additional findings of fact or formal conclusions of law as they deem appropriate.

Seth Thomas, United States Circuit Judge; Merrill E. Otis, United States District Judge; J. C. Collet, United States District Judge.

Dated this 21st day of January, 1941.

[File endorsement omitted.]

[fol. 761] In United States District Court

Order Allowing Exceptions—Filed February 24, 1941

Now on this day, upon application of Complainants, the Court allows Complainants' exceptions to the following rulings, decisions, acts and orders of the Court herein:

1. To the refusal of the Court to give each and all of the findings of fact requested by Complainants;

2. To the refusal of the Court to give each and all of the conclusions of law requested by Complainants;

3. To each of the following numbered findings of fact made and entered by the Court herein: Numbers 3, 4, 5, 6, 7, 8, 9, 11 and 14;

4. To each of the following numbered conclusions of law made and entered by the Court herein: Numbers I, II, IV, V and VI;

5. To the action of the Court in refusing to grant Complainants the relief prayed by them;

6. To the decision and order of the Court dismissing the complaint herein.

It is so Ordered this 24 day of February, 1941.

Seth Thomas, United States Circuit Judge. J. C. Collet, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 762] IN UNITED STATES DISTRICT COURT

FINAL DECREE—Filed February 24, 1941

This cause having come on for final hearing by the special court of three judges, constituted as required by the Act of October 22, 1913 (c. 32, 38 Stat. 219, 28 U. S. C., sec. 47), and the Court, upon consideration of the evidence and the arguments of counsel orally and on brief, having made and filed written findings of fact and conclusions of law, and having concluded, found and determined, for the reasons set forth in the opinion heretofore filed by this Court herein that the complaint should be dismissed, it is

Ordered, Adjudged and Decreed, that the complaint be, and the same is hereby, dismissed, for want of equity, at the cost of complainants.

This 24 day of February, 1941.

Seth Thomas, United States Circuit Judge. J. C. Collet, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 763] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed April 16, 1941

Now come the Complainants, The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, Uhlmann Grain Co., Davis-Noland-Merrill Grain Co., Simonds-Shields-Theis Grain Co., Merchants' Exchange of

St. Louis, Fox Grain Company, Ralston-Purina Company, Minneapolis Traffic Association, Archer-Daniels-Midland Company, Commander-Larabee Milling Company, The Van Dusen Harrington Company, Omaha Grain Exchange, Crowell Elevator Co., Omaha Elevator Company, Continental Grain Company, The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, Stratton Grain Company, Schreiber Milling and Grain Company, The J. C. Lysle Milling Company, The Blair Milling Company, General Mills, Inc., and Pillsbury Flour Mills Company and feeling themselves aggrieved by the final decree of the Court [fol. 764] entered herein on the 24th day of February, 1941, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the Court's action and its final decree erroneous are set forth in their Assignment of Errors filed herewith and to which reference is hereby made.

Wherefore, the premises considered, Complainants, your Petitioners herein, pray that an appeal in their behalf to the Supreme Court of the United States for the correction of the errors complained of and herewith duly assigned be allowed and granted; and that an order be had fixing the amount of bond to be given by Complainants as Appellants and conditioned as the law directs, and they pray a reversal of said decree.

M. W. Borders, Wilfred Wimmell, Samuel J. Wettrick, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 765] In United States District Court

Assignment of Errors—Filed April 16, 1941

Now come the Complainants and in connection with their petition for appeal, file the following Assignment of Errors on which they will rely on their appeal to the Supreme Court of the United States from the final decision and decree of the Three Judge District Court entered the 24th day of February, 1941.

Said District Court erred in the trial and decision of the above entitled cause in the following particulars, to-wit:

[fol. 766] 1. The Court erred in making and entering Finding of Fact No. 3 for the reason that intermediate or

interior markets other than primary markets have the right and privilege of the use of proportional rates when grain shipped from such interior or intermediate markets is stopped in transit at primary markets.

2. The Court erred in making and entering Finding of Fact No. 4 for the reason that such finding is based upon the assumption that there are different methods of transit involved in through rates with transit and the so-called "method provided by the proportional rate", when the fact is that the method of transit on the proportional rates or the so-called rate-break combinations is exactly the same as on the through rates, the only difference being in the form and amount of the rates.

3. The Court erred in making and entering Finding of Fact No. 5 in that the Court found that "the Commission found that the possession by the primary markets of the right to transit by both methods was unfair, discriminatory, unduly depressed the carriers' revenue and should be discontinued. That conclusion was based upon the following facts found by the Commission: That the concurrent use of transit balances and the proportional rate at the primary market * * * (d) gave an undue and unfair advantage to those having the right to use both the through rate with transit and the proportional rate over those only entitled to use the through rate with transit", for the reasons that this finding was based on the assumption that there are two methods of transit when such is not the fact and when the only difference in transit is in the form and amount of [fol. 767] the rates; that neither the Court nor the Commission found that the possession by the primary markets of the so-called right to transit by both methods was unjust, unreasonable, unjustly discriminatory or unduly preferential to such primary markets; and that the facts demonstrate that the so-called right of the primary markets did not give any undue or unfair advantage to such markets.

4. The Court erred in making and entering Finding of Fact No. 6 for the reasons that the Commission did not find that the so-called dual system of rates at the primary markets was an evil requiring a remedy and that the facts found by the Commission definitely proved the contrary.

5. The Court erred in making and entering Finding of Fact No. 7 for the reason that the Commission did not find

that there was no other way of correcting the situation complained of by Complainants other than by abolishing the so-called dual system at the primary markets.

6. The Court erred in making and entering Finding of Fact No. 8 for the reason that the Court there found that the Commission had found that through rates at primary markets with transit balances from the primary markets to points of destination at less than the proportional rates should be cancelled for the reasons stated in Findings of Fact 1 to 7, inclusive, which were erroneous, excepting as to Findings of Fact 1 and 2, for the reasons heretofore stated.

7. The Court erred in making and entering Finding of Fact No. 9, in that the Court found that Complainants contend that the findings of the Commission "are not facts [fol. 768] which rate regulations may be predicated upon" when the fact is that Complainants contend that, even if the facts found by the Commission are assumed to be correct, they do not justify the unjust discrimination, undue and unreasonable prejudice and unjust and unreasonable charges resulting from the Commission's orders.

8. The Court erred in making and entering Finding of Fact No. 14 for the reason that the Court found that the discrimination found to exist in Finding of Fact No. 13 "is no' undue, unfair or unjust'' because of certain findings alleged to have been made by the Commission and detailed in Finding of Fact No. 14, none of which findings were made by the Commission.

9. The Court erred in making and entering Conclusion of Law No. I.

10. The Court erred in making and entering Conclusion of Law No. II.

11. The Court erred in making and entering Conclusion of Law No. IV.

12. The Court erred in making and entering Conclusion of Law No. V.

13. The Court erred in making and entering Conclusion of Law No. VI.

14. The Court erred in failing to consider and give effect to the fundamental and determining fact that the

Interstate Commerce Commission found that there is no difference in the transportation service or the cost thereof as between transit at primary markets and at interior points, and hence that the orders of the Commission requiring the primary markets to transit on higher rates than interior points (or permitting transit at interior [fol. 769] points at lower rates than at the primary markets) were unjust and unreasonable and constitute unjust discrimination and undue and unreasonable prejudice against the primary markets, in violation of Sections 1(5), 2 and 3(1) of the Interstate Commerce Act, and are therefore null and void.

15. The Court erred in dismissing the bill of complaint for the findings of the Court do not support its conclusions, because there is no finding that there is any difference in the transportation service or the cost thereof as between transit at the primary markets and interior points, or that the Commission found any such difference, which alone would justify charging higher rates for transit at the primary markets than at interior points.

16. The Court erred in finding and proceeding on the assumption that interior points can transit only on the through rates (Opinion Par. 20, third paragraph from end of Opinion), when the fact is that they can transit on the rate-break combinations, of which the proportional rates are part, the same as the primary markets, while the latter are not permitted to transit on the through rates, thus constituting unjust discrimination and undue and unreasonable prejudice against the primary markets, and creating unjust and unreasonable charges.

17. The Court erred in finding and proceeding on the assumption that there are two methods of transit (Opinion Pars. 5, 6, 7, 8, 14, 15 and 20, Finding 5), when the fact is and the opinions of the Commission clearly show that the method of transit on the proportional rates or the rate-break combinations is exactly the same as on the through [fol. 770] rates, and the only difference is in the form and the amount of the rates.

18. The Court erred in finding that the Commission found that the possession by the primary markets of the right to transit by both methods (on both kind of rates) was unfair and discriminatory, and that the concurrent use of transit

balances and proportional rates at the primary markets "(d) Gave an undue and unfair advantage to those having the right to use both the through rate with transit and the proportional rate over those entitled to use the through rate with transit". (Finding 5, Opinion Pars. 8, 13) for the reason that the Commission did not so find.

19. The Court erred in finding that the Commission found that there is no other way of correcting the situation herein complained of than by abolishing the dual system at the primary markets. (Findings 7, 14, Opinion Par. 13) for the reason that the Commission did not so find.

20. The Court erred in not finding that the discrimination which it found is undoubtedly disclosed by the illustration given in Paragraph 18 of the Opinion is unjustly discriminatory and unduly and unreasonably prejudicial.

21. The Court erred in finding in its Opinion that to permit the primary markets to transit on the through rates would result to "the material disadvantage of other markets" (Par. 17) and specifically, that in the illustration given "the Kansas City miller would have a distinct advantage over the Independence miller which the Commission found was not insignificant in practice" (Par. 17).

[fol. 771] 22. The Court erred in finding in its Opinion (Par. 20) that "the Commission found that the granting of the privilege of transit on through rates to interior intermediate points was of no substantial injury to the primary markets because of the insignificant opportunity of the interior points to, by the transit privilege under through rates, compete with the primary markets operating under proportional rates", for the reason that the Commission did not so find.

23. The Court erred in stating in its Opinion (Par. 10) that the gravamen of the complaint is "that the order of the Commission denying the primary markets the privilege of having both the transit privilege under the proportional rate and also under the through rate with transit is unreasonable, unfair, unjust and discriminatory", when the fact is that Complainants are merely requesting that they be placed on an equality with interior points by being permitted to transit on both the rate-break combinations and

the through rates, as interior points are permitted to do and that the unlawful rates and charges be set aside.

24. The Court erred in stating in its Opinion (Par. 12) that Complainants contend that "(1) the findings of the Commission are general and do not find sufficient evidentiary facts upon which the general factual conclusions may be properly based", when the fact is that Complainants contend that the record conclusively shows and the Commission found that there is no difference whatever in the transportation service or the cost thereof, and hence that the incidental reasons or findings of the Commission, to which alone reference is made by the Court, do not justify [fol. 772] the discrimination and prejudice created by the orders of the Commission.

25. The Court erred in stating in its Opinion (Par. 15) in effect that Complainants contend that the facts upon which the Commission's conclusion was based are facts which under the law may not constitute the foundation for rate regulation or adjustment and that Complainants are entitled to the advantages of the dual system of rates because of their geographical location, when the fact is that Complainants contend that the rate-break basis of rates results from natural conditions and that any advantage inherent therein may therefore not be offset by granting to interior points the right to transit on lower rates than those on which the primary markets are permitted to transit.

26. The Court erred in failing and refusing to make and enter Finding of Fact No. 1 requested by Complainants.

27. The Court erred in failing and refusing to make and enter Finding of Fact No. 2 requested by Complainants.

28. The Court erred in failing and refusing to make and enter Finding of Fact No. 3 requested by Complainants.

29. The Court erred in failing and refusing to make and enter Finding of Fact No. 4 requested by Complainants.

30. The Court erred in failing and refusing to make and enter Finding of Fact No. 5 requested by Complainants.

31. The Court erred in failing and refusing to make and [fol. 773] enter Finding of Fact No. 6 requested by Complainants.

32. The Court erred in failing and refusing to make and enter Finding of Fact No. 7 requested by Complainants.

33. The Court erred in failing and refusing to make and enter Finding of Fact No. 8 requested by Complainants.

34. The Court erred in failing and refusing to make and enter Finding of Fact No. 9 requested by Complainants.

35. The Court erred in failing and refusing to make and enter Finding of Fact No. 10 requested by Complainants.

36. The Court erred in failing and refusing to make and enter Finding of Fact No. 11 requested by Complainants.

37. The Court erred in failing and refusing to make and enter Finding of Fact No. 12 requested by Complainants.

38. The Court erred in failing and refusing to make and enter Finding of Fact No. 13 requested by Complainants.

39. The Court erred in failing and refusing to make and enter Finding of Fact No. 14 requested by Complainants.

40. The Court erred in failing and refusing to make and enter Finding of Fact No. 15 requested by Complainants.

41. The Court erred in failing and refusing to make and enter Finding of Fact No. 16 requested by Complainants.

[fol. 774] 42. The Court erred in failing and refusing to make and enter Finding of Fact No. 17 requested by Complainants.

43. The Court erred in failing and refusing to make and enter Finding of Fact No. 18 requested by Complainants.

44. The Court erred in failing and refusing to make and enter Finding of Fact No. 19 requested by Complainants.

45. The Court erred in failing and refusing to make and enter Finding of Fact No. 20 requested by Complainants.

46. The Court erred in failing and refusing to make and enter Conclusion of Law No. 1 requested by Complainants.

47. The Court erred in failing and refusing to make and enter Conclusion of Law No. 2 requested by Complainants.

48. The Court erred in failing and refusing to make and enter Conclusion of Law No. 3 requested by Complainants.

49. The Court erred in failing and refusing to make and enter Conclusion of Law No. 4 requested by Complainants.

50. The Court erred in failing and refusing to make and enter Conclusion of Law No. 5 requested by Complainants.

51. The Court erred in failing and refusing to make and enter Conclusion of Law No. 6 requested by Complainants.

52. The Court erred in failing and refusing to make and enter Conclusion of Law No. 7 requested by Complainants.

[fol. 775] 53. The Court erred in failing and refusing to make and enter Conclusion of Law No. 8 requested by Complainants.

54. The Court erred in failing and refusing to make and enter Conclusion of Law No. 9 requested by Complainants.

55. The Court erred in failing and refusing to make and enter Conclusion of Law No. 10 requested by Complainants.

56. The Court erred in failing and refusing to make and enter Conclusion of Law No. 11 requested by Complainants.

57. The Court erred in failing and refusing to make and enter Conclusion of Law No. 12 requested by Complainants.

58. The Court erred in failing and refusing to make and enter Conclusion of Law No. 13 requested by Complainants.

59. The Court erred in failing and refusing to make and enter Conclusion of Law No. 14 requested by Complainants.

60. The Court erred in failing and refusing to make and enter Conclusion of Law No. 15 requested by Complainants.

61. The Court erred in failing and refusing to make and enter Conclusion of Law No. 16 requested by Complainants.

62. The Court erred in failing and refusing to make and enter Conclusion of Law No. 17 requested by Complainants.

63. The Court erred in refusing to grant Complainants the relief prayed for by them.

[fol. 776] 64. The Court erred in ordering that the Complaint herein should be dismissed.

For which errors the Complainants pray that the judgment of the District Court of the United States for the Western Division of the Western District of Missouri, rendered on the 24th day of February, 1941, be reversed and

that a judgment be rendered in favor of the Complainants and for costs.

M. W. Borders, Wilfred Wimmell, Samuel Wettrick, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 777] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 16, 1941

It appearing to the Court in this cause that the Complainants, the Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, Uhlmann Grain Co., Davis-Noland-Merrill Grain Co., Simonds-Shields-Theis Grain Co., Merchants' Exchange of St. Louis, Fox Grain Company, Ralston Purina Company, Minneapolis Traffic Association, Archer-Daniels-Midland Company, Commander-Larabee Milling Company, The Van Dusen Harrington Company, Omaha Grain Exchange, Crowell Elevator Co., Omaha Elevator Company, Continental Grain Company, The Saint Joseph Grain Exchange, R. G. Graham, K. B. Clark, Stratton Grain Company, Schreiber Milling and Grain Company, The J. C. Lysle Milling Company, the Blair Milling Company, General Mills, Inc., and Pillsbury Flour Mills Company have filed their petition for appeal to the Supreme [fol. 778] Court of the United States and have filed therewith their Assignment of Errors and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question.

It is hereby Ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in this cause on the 24th day of February, 1941 and that said Complainants give a bond with good and sufficient security in the sum of $500.00 that they as Appellants shall prosecute their appeal to effect and answer all costs if they fail to make their appeal good.

Dated this 16th day of April, 1941.

Merrill E. Otis, United States District Judge; J. C. Collet, United States District Judge; Seth Thomas, United States Circuit Judge.

[File endorsement omitted.]

[fol. 779] RECITAL AS TO BOND

(Appellants presented Bond on Appeal in the sum of $500.00, signed by themselves as principals and by Walter R. Scott as surety; said bond was approved by J. C. Collet, United States District Judge, and filed on April 16th, 1941.)

[fols. 780-782] Citation in usual form filed April 18, 1941, omitted in printing.

[fol. 783] IN UNITED STATES DISTRICT COURT

STIPULATION OF COUNSEL THAT CERTAIN EXHIBITS BE TRANSMITTED TO SUPREME COURT ON APPEAL INSTEAD OF TRANSCRIPTS THEREOF—Filed May 10, 1941

It is stipulated and agreed, that the following exhibits, received in evidence in the above-entitled cause, be transmitted to the Supreme Court on appeal as original exhibits, instead of transcripts thereof:

Exhibits Nos. 9, 10, 11, 13, 14, 15 and 17 to the Plaintiffs' bill of complaint.

Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

Defendants' Exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18 and 19.

It is further stipulated and agreed, that these exhibits shall not be printed as part of the transcript of record in the Supreme Court but that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

M. W. Borders, Samuel J. Wettrick, Wilfred Wimmell, Counsel for Plaintiffs. Smith R. Brittingham, Counsel for the United States. J. Stanley Payne, Counsel for the Interstate Commerce Commission.

May 7, 1941.

[File endorsement omitted.]

[fol. 784] IN UNITED STATES DISTRICT COURT

ORDER DIRECTING PART OF ORIGINAL RECORD TO BE TRANSMITTED ON APPEAL—Filed May 10, 1941

Good cause appearing therefor,

It is Ordered and Decreed, That the following exhibits, received in evidence in the above-entitled cause, be transmitted to the Supreme Court on appeal as original exhibits, instead of transcripts thereof:

Exhibits Nos. 9, 10, 11, 13, 14, 15 and 17 to the Plaintiffs' bill of complaint.

Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

Defendants' Exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18 and 19.

Merrill E. Otis, District Judge.

May 10, 1941.

[File endorsement omitted.]

[fols. 785-789] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME FOR DOCKETING CASE IN SUPREME COURT AND FOR FILING TRANSCRIPT OF RECORD—Filed April 30, 1941

Now upon application of Appellants for an extension of the time for docketing this case and for filing transcript of the record in the Supreme Court of the United States and it appearing to the Court that additional time will be required by Appellants for such purpose,

It is Ordered that the time for docketing this case in the Supreme Court and for filing a transcript of the record in said Court be extended until July 5, 1941.

Dated this 22 day of April, 1941.

Seth Thomas, United States Circuit Judge, Merrill E. Otis, United States District Judge, J. C. Collet, United States District Judge.

[File endorsement omitted.]

[fol. 790] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 791] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—Filed June 18, 1941

Statement of Points

Appellants contend that in dismissing their Bill of Complaint, the District Court erred in the particulars pointed out in the Assignments of Error and in support of that contention, Appellants intend to rely upon the following points:

1. It appears from the reports and orders of the Interstate Commerce Commission that there is no difference in the transportation and transit service or the cost thereof as between transit at primary markets and at interior points, and hence that its orders requiring the primary markets to transit on higher rates than interior points (or [fol. 792] permitting transit at interior points on lower rates than at the primary markets) are in violation of Sections 1(5), 2 and 3(1) of the Interstate Commerce Act and are null and void.

2. The grounds upon which the Commission denied the primary markets the right to transit on the same basis as interior points are insufficient as a matter of law to constitute a lawful basis or justification for the violations of the Act inherent in and resulting from the decisions and orders of the Commission.

3. The grounds upon which the Commission refused to grant Complainants any relief from the discrimination against them and against the primary markets, and denied their complaints are insufficient as a matter of law to constitute a lawful basis or justification for such orders.

4. The orders of the Commission are so unjust, unreasonable and arbitrary as to render them null and void.

5. The trial court erred in failing to recognize and give effect to the foregoing propositions and its judgment should, therefore, be reversed and the cause remanded with instruc-

tions to the lower court to grant the relief prayed for by Complainants.

Designation of Portions of Record to be Printed

Appellants believe that the entire record as filed, subject only to the following exclusions, will be necessary for the consideration of the points enumerated above:

[fol. 793] 1. Do not print Exhibit 1 to the Bill of Complaint (pp. 32-237 of Transcript), as sufficient copies of this Exhibit will be furnished.

2. As to Exhibit 2 to the Bill of Complaint, print only the following: The style of the case and date of decision appearing on page 238 of the Transcript, the Report of the Commission, beginning on page 240 of the Transcript and extending to page 262, and the Order on page 268, thereby omitting the Syllabi on pages 238, 239 and 240, and omitting the Appendix on pages 262 to 267 inclusive.

3. As to Exhibit 3 to the Bill of Complaint, print the Certification appearing on page 269 of the Transcript, the Report of the Commission, beginning on page 277 and extending to page 460, and the Order on pages 485 and 486, thereby omitting the Title page (p. 270), the Index (pp. 271-274 inc.), the Syllabi (pp. 275-277) and the Appendix (pp. 460-484).

4. As to Exhibit 4 to the Bill of Complaint, print the Certification on page 487, the report of the Commission, beginning on page 492 and extending to page 536, inclusive, and the Order on page 538, thereby omitting the Title page (p. 488), the Index (p. 489), the Syllabi (pp. 490-492) and the Appendix (pp. 536-537).

5. As to Exhibit 5 to the Bill of Complaint, omit page 540, which is a duplication of page 539, and print the rest.

6. As to Exhibit 6 to the Bill of Complaint, omit page 549, which is a duplication of pages 550 and 551, and print the rest.

[fol. 794] 7. As to Exhibit 7 to the Bill of Complaint, omit page 566, which is a duplication of page 567, and print the rest.

8. As to Exhibit 8 to the Bill of Complaint, print everything (pp. 579-599, inc.), except the Appearances of Counsel on pages 580 and 581.

9. Do not print the Praecipe for Transcript, appearing on page 755 to 758 of the Transcript, as filed.

M. W. Borders, Samuel J. Wettrick, Attorneys for Appellants.

[fol. 795] AFFIDAVIT OF SERVICE

STATE OF MISSOURI,
County of Jackson, ss:

Wilfred Wimmell, being first duly sworn, says that he served upon each of the defendants and interveners herein statement of points upon which Appellants intend to rely and designation of portions of record to be printed, original of which is attached hereto, by depositing true copies thereof in the United States mails, postage prepaid, and properly addressed to the attorneys of record of each of said defendants and interveners on the 17th day of June, 1941.

Wilfred Wimmell.

Subscribed and sworn to before me this 17th day of June, 1941. Beulah F. Johnson, Notary Public. My commission expires April 1, 1944. (Seal.)

[fol. 795a] [File endorsement omitted]

[fol. 796] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEES OF ADDITIONAL PORTIONS OF RECORD TO BE PRINTED—Filed June 27, 1941

Appellees believe that all reports of record of the Interstate Commerce Commission should be printed in their entirety and therefore designate for printing the portions of the reports appearing as Exhibits 2, 3, 4 and 8 to the bill of complaint which appellants' designation suggests should be excluded, viz.:

1. Print in full Exhibit 2 to the bill of complaint.

2. Print in full Exhibit 3 to the bill of complaint.

3. Print in full Exhibit 4 to the bill of complaint.

4. Print in full Exhibit 8 to the bill of complaint.

Smith R. Brittingham, Special Assistant to the Attorney General, for the United States. J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Commission, for the Commission.

[fol. 797] [File endorsement omitted.]

Endorsed on Cover: Enter M. W. Borders. File No. 45471, W. Missouri, D. C. U. S. Term No. 143. The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, et al., Appellants, vs. The United States of America, Interstate Commerce Commission, Board of Railroad Commissioners of the State of North Dakota, et al. Filed June 7, 1941. Term No. 143 O. T. 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

Motion To Advance

M. W. BORDERS,
WILFRED WIMMELL,
SAMUEL J. WETTRICK,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Section 210 of the Judicial Code as amended by the Acts of March 3, 1911 c. 231, 36 Stat. 1150 and of October 22, 1913 c. 32, 38 Stat. 220 (U. S. C. A. Title 28, Sections 47 and 47a). This suit was brought under the provisions of paragraph 28 of Section 207 of the Judicial Code (U. S. C. A. Title 28, Sec. 41 (28)) to

enjoin, set aside, annul and suspend orders of the Interstate Commerce Commission. The suit was tried before a District court composed of the Honorable Seth Thomas, Circuit Judge, the Honorable John C. Collet, District Judge and the Honorable Merrill E. Otis, District Judge, as required by the provisions of the Judicial Code (U. S. C. A. Title 28, Sec. 41 (28), 43, 44, 45, 46, 47, 47a). The three-Judge District court dismissed the bill of complaint. Its final decree was filed and entered on February 24, 1941. Application for appeal is herewith presented on the 16th day of April, 1941.

Respectfully submitted,

M. W. Borders,
Wilfred Wimmell,
Samuel J. Wettrick,
Attorneys for Complainants.

Filed in the United States District Court April 16, 1941.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

No. 555.

THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, et al., *Complainants,*

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants,*

and

THE BOARD OF RAILROAD COMMISSIONERS of the State of North Dakota, et al., *Interveners.*

APPEARANCES:

M. W. Borders and Wilfred Wimmell, Kansas City, Mo., and Samuel J. Wettrick, Chicago, Illinois, attorneys for Complainants.

Thurman Arnold, Assistant Attorney General, Smith R. Brittingham, Jr., Special Assistant to the Attorney General, Elmer B. Collins, Special Assistant to the Attorney General and Richard K. Phelps, Assistant United States Attorney, attorneys for United States, defendant.

J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Commission and Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, attorneys for defendant Interstate Commerce Commission.

Alvin C. Strutz, Attorney General of North Dakota, and James M. Hanley, Commerce Counsel of the Board of Railroad Commissioners of the State of North Dakota, attorneys for the Board of Railroad Commissioners of the State of North Dakota, et al., intervenors.

J. W. Taylor, Attorney General and D. W. Thomas, Assistant Attorney General of the State of Idaho, attorneys for the Public Utilities Commission of the State of Idaho, and Idaho State Grange, Inc., Interveners.

Ralph W. Currie, Frank A. Leffingwell and V. E. Phillips, attorneys for The Texas Industrial Traffic League, Fort Worth Grain and Cotton Exchange, and Tex-O-Kan Flour Mills Company, Interveners.

Harrison J. Freebourn, Attorney General of the State of Montana, and Emmett C. Angland, Counsel for the Board of Railroad Commissioners, attorneys for the Board of Railroad Commissioners for the State of Montana, interveners.

Before THOMAS, Circuit Judge, and OTIS and COLLET, District Judges.

COLLET, *District Judge*, delivered the opinion of the Court.

Action to enjoin the enforcement of an order of the Interstate Commerce Commission affecting railroad grain rates. Plaintiffs are the Board of Trade of Kansas City, Missouri, engaged in the business of buying, selling, processing and handling grain, flour, mill feeds, mixed feeds and other products of grain at that city; certain individuals and corporations engaged in a similar business at Kansas City, Missouri; the Minneapolis Traffic Association and private business interests engaged in a like business at Minneapolis, Minnesota; the Omaha Grain Exchange and private business interests engaged in the same line of endeavor at Omaho, Nebraska; the St. Joseph Grain Exchange and individual interests engaged in the grain business at St. Joseph, Missouri, and certain individuals interested in a like business at Leavenworth, Kansas, and Atchison, Kansas.

Plaintiffs bring this action for themselves and in behalf of others similarly interested at Kansas City, Missouri, and Kansas City, Kansas; St. Louis, Missouri; Omaha, Nebraska; Minneapolis, Minnesota; St. Joseph, Missouri; Atchison, Kansas, and Leavenworth, Kansas, which centers are known as and will hereafter be referred to as "primary" or "rate-break" markets.

The defendants are the United States of America and the Interstate Commerce Commission. Interested parties intervening as parties defendant with the object of sustaining the order of the Interstate Commerce Commission are the

Board of Railroad Commissioners of the State of North Dakota and various North Dakota interests; the Public Utilities Commission of the State of Idaho and the Idaho State Grange, Inc.; the Texas Industrial Traffic League; the Forth Worth Grain and Cotton Exchange and Tex-O-Kan Flour Mills Company, and the Board of Railroad Commissioners of the State of Montana represented by the Attorney-General of that State.

As required by the Judicial Code, Title 28 U. S. C. A. Sections 41(28), 43, 45, 46, 47 and 48, a three-judge statutory court was convened and the cause heard on the merits November 11, 1940.

Pursuant to a Joint Resolution of Congress of January 30, 1925, known as the Hoch-Smith Resolution, 43 Stat. 801, 49 U. S. C. A. Sec. 55, the Commission embarked upon a general investigation of the rate structure of common carriers in the Western District therein defined. The Commission found in existence two basic methods for permitting the temporary stopping of grain for milling and other purposes at intermediate points between the point of origin and point of final destination without requiring the payment of the comparatively high local rates for each of the two segments of the transportation. Those two methods are known as the through rate with transit and the proportional rate. The issues here involved necessitate a clear understanding of these rates.

The through rate with transit, or "transit" as it is frequently referred to, may best be explained in the language of the Commission:

"Transit permits of the drawing of grain into the transit point, and of the later outbound shipment of an equivalent tonnage of that kind of grain or its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the inbound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the inbound grain (or its equivalent in tonnage) or its products. When the outbound shipment is tendered the inbound freight bill is surrendered as author-

ity for the charging on the outbound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the inbound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination." 215 I. C. C. 83, l. c. 90.

The proportional rate or "rate-break combination" as it is frequently designated, is peculiar to the primary or rate-break markets where it alone applies. The rate itself is the average of all transit balances from a primary market to a final destination point. It is the substantial equivalent of the transit balances between each of the primary markets and the various final destination points to which it is made applicable. Grain dealers at the primary markets could, therefore, know in advance of the purchase of grain at its origin exactly what the rate would be from each primary market to the principal final destination points to which the proportional rate applies regardless of what the transit balance of the through rate from the particular point of origin to the final destination might be.

Speaking in general terms, the Commission found that the availability of both methods of transit to the primary markets resulted in undue and unfair discrimination in favor of the primary markets over intermediate interior points not possessing the proportional rates, confusion and unsettlement of grain prices, and undue loss of revenue to the carriers. It concluded that both methods of transit should not be available to any market, and finding that the proportional rate was more advantageous to the primary markets than the through rate with transit, it reduced the proportional rate and ordered the discontinuance of transit privileges under through rates at the primary markets when the reshipment was between a primary market and a final destination point having an established proportional rate. It did not abolish the privilege of transit on through rates when the reshipment was to a point not having a proportional rate (205 I. C. C. 301). At the time of the original consideration of the rate situation the Commission was of the opinion that it was necessary to eliminate transit privileges on through rates at intermediate interior points other than primary markets

when those intermediate points were located upon the line between primary markets and final destination points to which proportional rates applied. That order of the Commission (164 I. C. C. 619) was set aside (on other grounds) as a result of the opinion of the Supreme Court in Atchison, Topeka and Santa Fe Ry. Co. *v.* United States, 284 U. S. 248. Upon reconsideration of the entire question the Commission reiterated, as above noted (205 I. C. C. 301), its conclusion that both proportional rates and transit on through rates should not be available to the same market. It later, however, revised its conclusion as to the necessity of prohibiting transit on through rates at intermediate interior points, the effect of which had been to deprive those points of any substantial transit privileges, and by subsequent order permitted transit under through rates at all interior intermediate points which did not possess the proportional rates.

On complaint of the primary, or rate-break markets, that the deprivation of transit privileges on through rates at those markets was injurious, the Commission (223 I. C. C. 235) granted permission to the carriers to voluntarily grant transit privileges on through rates at the primary markets for a limited period. The carriers declined upon the general grounds that proportional rates having been decreased at the time the right to the dual system was prohibited at primary markets, the re-establishment of the transit privilege on through rates at primary markets would re-establish the dual system with subsequent loss of revenue which they could not afford. The primary markets then petitioned the Commission for a mandatory order on the carriers to reinstate the transit privilege on through rates at those points. This the Commission denied and permitted the permissible order to expire on the date theretofore fixed (229 I. C. C. 9). Thereafter, the plaintiffs herein again petitioned the Commission for modification of its previous order abolishing the dual system and formally requested the re-establishment of transit privileges on through rates. This the Commission denied (231 I. C. C. 793).

The gravamen of the complaint of plaintiffs in the present action is that the order of the Commission denying

the primary markets the privilege of having both the transit privilege under the proportional rate and also under the through rate with transit is unreasonable, unfair, unjust and discriminatory.

The plaintiffs assert that orders of the Interstate Commerce Commission will be set aside (1) if in excess or disregard of its delegated powers; (2) if based in whole or in part upon an erroneous construction or application of the law; (3) if based in whole or in part on consideration of evidence outside of the record; (4) if, although acting within the power of its delegated authority the Commission's action is arbitrary and unreasonable; (5) if not based on evidence or findings based thereon.

Specifically, plaintiffs contend that in the present case:

(1) The findings of the Commission are general and do not find sufficient evidentiary facts upon which the general factual conclusions may be properly based.

(2) The facts found do not authorize the order.

(3) That the order of the Commission is unjust, unreasonable and discriminatory as to the primary markets in violation of the provisions of the Interstate Commerce Commission Act as amended, Title 49 U. S. C. A. Sec. 1, et seq. (which sections are quoted below [1]); and is so arbitrary and unjust that it exceeds the Commission's powers and is void.

---

[1] "Sec. 1 (5): All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: • • •

Sec. 2: If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

The Commission's findings in part are:

(1) That the use of transit balances under through rates and the proportional rates out of the same rate-break markets—

(a) tend to disorganize the rate-break combinations,

(b) disorganize the general rate structure,

(c) make uncertain in advance the outbound basis of charge,

Sec. 3 (1): It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit points, or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 15 (1): Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property or for the transmission of messages as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation or practice is or will be just, fair and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

(d) give an undue preference to those having the privilege of both transit balance and proportional rates,

(e) depress the price of grain at the rate-break markets and by direct reflection at the country points, and

(f) reduce the revenue of the carriers.

(2) That the dual system of rates at these markets was an evil requiring a remedy.

(3) That the evils of the dual system cannot be eliminated by abolishing proportional rates on outbound shipments from the primary markets, nor by abolishing transit on through rates generally; nor by adopting a mileage basis for all rates, nor by any known and practical means other than the abolishment of the dual system; and

(4) That prescribed through rates based upon flat (or local) rates to the primary markets and proportional rates beyond will be reasonable and fair to all markets; and that overhead through rates through primary markets less than those combinations should be cancelled.

The above summarization of the Commission's findings indicates that it found both specific facts and the ultimate fact which necessarily followed therefrom. It is to be borne in mind that plaintiffs do not question the existence of or sufficiency of evidence to support the factual conclusions. On the contrary, they have apparently conceded without argument that there was evidence before the Commission on the subject embraced within the Commission's conclusions. The point is, that the findings are not sufficient in themselves upon which the order could legally be based. It may well be asserted that the findings of the Commission to the effect that the possession of both the proportional rate and the through rate with transit by the same market is unreasonable and discriminatory is such a conclusion of fact as was condemned in United States *v.* C. M. St. P. & P. R. Co., 294 U. S. 499. But the finding of the Commission that the use of transit balances less than proportional rates at the primary rate-break markets tends to disorganize the proportional rates, disorganizes the general rate structures, makes uncer ain the basis of charge on outbound shipments, gives a preference (which the Com-

mission concluded was undue) to markets possessing both methods of transit, depresses the price of grain at the primary markets and at country points and reduces the revenues of the carriers, are plain facts from which the Commission concluded a change should be made. The explanation of the Commission's reasons for making the change it did make to correct the factual situation found to exist may be characterized as the Commission's argumentative conclusions but they properly tend to explain the reasoning of the Commission from the evidentiary facts. If evidentiary facts exist to support the Commission's conclusions, we are not here concerned with the correctness of the Commission's reasoning, with the soundness of its conclusions or with any possible inconsistencies with findings made in other proceedings before it. Virginian Ry. Co. *v.* United States, 272 U. S. 658, 665-666. Obviously, the Commission found the necessary facts upon which the conclusion it reached was based.

The second question presented is based upon several arguments, all of which when reduced to their final analysis amount to the simple proposition that the evidentiary facts upon which the Commission's conclusion was based are facts which, under the law, may not constitute the foundation for rate regulation or adjustment. Otherwise stated, plaintiffs contend that the advantages which they had from the dual methods of transit available to them sprang from the geographical location of the primary markets and other natural conditions existing at those markets, such as large grain storing facilities and numerous rail lines, which plaintiffs assert entitle those markets to the advantages of the dual system. For that reason, plaintiffs insist the Commission's conclusion that the dual system should be abolished was based upon facts which, under the law, could not legally justify the order depriving them of the dual system.

It must readily be conceded that the Commission may not equalize unequal natural conditions. Texas & Pacific Ry. Co. *v.* United States, 289 U. S. 627; Penn. Refining Co. *v.* West N. Y. & P. R. R. Co., 208 U. S. 208; United States *v.* Ill. Cent. R. R., 263 U. S. 515; Ellis *v.* Interstate Commerce

Commission, 237 U. S. 434. Academically speaking, it may not give to a community, the geographical location of which makes it naturally more inaccessible, the same advantages of accessibility to a given point which another community advantageously situated possesses. But the Commission may adjust rates to meet "transportation conditions." That transportation conditions may and should include conditions other than mere operating conditions is apparent from the following cases: Texas & Pacific Ry. Co. *v.* Interstate Commerce Commission, 162 U. S. 197; Ann Arbor Ry. Co. *v.* United States, 281 U. S. 658; Interstate Commerce Commission *v.* C. R. I. & P. Ry. Co., 218 U. S. 88.

The establishment of proportional rates at the primary markets was to an extent because of their natural location and the convergence and radiation of rail lines thereat and therefrom. The proportional rate was considered peculiarly appropriate to the natural conditions existing at the primary markets. It was intended to secure to those markets all of the advantages of the through rate with transit to which the primary markets were entitled from that rate because of their geographical location and natural advantages and the additional advantages inherent in the proportional rates, which additional advantages sprang from natural and geographical considerations. But when the Commission examined the situation resulting from the use of both the transit on through rates and the proportional rates by the same markets it found that the combining of the use of both resulted in advantages to the primary markets which did not flow from their geographical location but were on the contrary in spite of natural conditions and to the material disadvantage of other markets. That disadvantage may best be explained by a brief illustration. A miller at Independence, Missouri, situated only a short distance from Kansas City, Missouri, purchases grain at its origin at Dodge City, Kansas. He may move that grain to Independence on the local rate from Dodge City to Independence and reship to Chicago for the transit balance of approximately 16 cents. The miller at Kansas City may likewise purchase grain at Dodge City, Kansas, move it to Kansas City on the local rate and reship to Chicago on the proportional

rate of 16 cents. If, however, the privilege of utilizing the transit balance on the through rate is available to the miller at Kansas City, Missouri, he may reship from Kansas City to Chicago on the transit balance of the through rate from Omaha to Chicago via Kansas City which is approximately 10 cents, if, (as the Commission found was almost always the case) the Kansas City miller had moved a like quantity of grain from Omaha to Kansas City upon the proportional rate of 6½ cents. Thus the Kansas City miller would have a distinct advantage over the Independence miller which the Commission found was not insignificant in practice. Undoubtedly, such a condition must be characterized as a transportation condition which the Commission is authorized to regulate. Even if that were not true, however, the loss of revenue to the railroads resulting from the illustration, the disorganization of the *existing*[1] proportional rate, and the effect on grain prices are undeniably transportation conditions, which the Commission must legally take cognizance of. It must follow, therefore, that the facts upon which the Commission based its conclusion were not facts which the Commission could not legally consider as a basis of rate regulation.

It is further contended by plaintiffs that the result of the deprivation of transit privileges on through rates at the primary markets is so unreasonable and unjust that it may not stand. The argument is based upon the fact that in some instances a grain dealer or miller at a point substantially the same distance or even at a greater distance from final destination may reship to the latter point on the transit balance for less than the proportional rate now alone available to the primary market. An illustration will again best suffice as an explanation. It is possible for a miller at Independence, Missouri, to purchase grain at Omaha, move that grain to Independence, mill it there and reship it to Chicago for the transit balance of the over-all through rate of 16 cents, whereas if the miller at Kansas City purchases grain at Omaha, moves it to Kansas City upon the proportional rate existing between Omaha and Kansas City of 6½ cents and reships to

[1] See Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476. Compare United States v. Chicago, M. St. P. & P. R. Co., 294 U. S. 499.

Chicago over the same line which the Independence miller uses, he must in addition pay the proportional rate between Kansas City and Chicago of 16 cents or a total of 22½ cents. Undoubtedly, this situation discloses a discrimination against Kansas City. The same discrimination would apply to other primary markets using other similar illustrations. Fundamentally, the condition depicted may occur because of the existence of an unusual and unnatural through rate between Omaha and Chicago via Kansas City set up by carriers not having a direct route between Omaha and Chicago in order that they may compete with the direct lines in the movement of grain between those points. Obviously, Kansas City shippers are not entitled because of their geographical location to ship grain from Omaha to Kansas City and thence to Chicago at the same rate as grain is carried from Omaha on a direct line to Chicago. If they move grain from the territory comprising their natural trade territory the proportional rate gives them all and more than the interior points possess with transit on through rates from that area. The question really is whether the availability to interior points of unnatural through rates with transit which are not available to the primary markets is so discriminatory as to render the rate structure unlawful.

Unless the discrimination be undue, unjust, unfair or unreasonable, the Courts may not interfere, United States *v.* Chicago Heights Trucking Co., 310 U. S. 344, and the Commission's conclusion that the result of the order is not unjust or unreasonably discriminatory, is binding upon the Court unless the Commission has proceeded upon erroneous legal principles or the order is so patently arbitrary that it may not be sustained on any rational theory. Rochester Telephone Corp. *v.* United States, 307 U. S. 125; Interstate Commerce Commission *v.* Union Pacific, 222 U. S. 541; Manufacturer's Ry. Co. *v.* United States, 246 U. S. 457. The legality of the considerations actuating the Commission has heretofore been considered, hence we are now concerned only with the question of unreasonableness.

The Commission supported the reasonableness of the discrimination depicted by the illustration by pointing out

that it was necessary to avoid unfairness to interior points such as Independence to make available to them one or the other of the two methods of transit. It was impossible to give them the benefit of the broader benefits incident to the proportional rate because those points did not have the geographical or natural advantages entitling them to the proportional rate. It was impossible to devise a practical rate structure which eliminated all possible minor discriminations. Hence, they must be permitted to transit on through rates or none at all. The Commission found that the granting of the privilege of transit on through rates to interior intermediate points was of no substantial injury to the primary markets because of the insignificant opportunity of the interior points to, by the transit privilege under through rates, compete with the primary markets operating under proportional rates. The facts amply support the Commission in that conclusion. It must follow that the limited privilege extended to the interior points incident to their possession of the right to transit on through rates is not such an undue, unjust or unfair discrimination as to be so clear and obvious that it may be characterized as illegal.

It must be assumed that should the interior points in some unforseen manner be able to utilize their transit privileges in such manner as to materially equalize or tend to overcome the natural advantages possessed by the primary markets, the Commission will, upon proper application, adequately meet the situation.

The plaintiffs' bill should be dismissed on the merits.

SETH THOMAS,
United States Circuit Judge.
MERRILL E. OTIS,
United States District Judge.
J. C. COLLET,
United States District Judge.

Dated this 21st day of January, 1941.

Filed in the United States District Court Jan. 21, 1941.

[fol. 16] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY, MO., et al., Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellees,

and

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, et al., Interveners

MOTION TO ADVANCE

Come now Appellants by their attorneys of record herein and move the Court to advance this case upon the docket of the Court for the following reasons:

This is an appeal from a decision by a specially constituted three Judge District Court of a suit brought to enjoin, set aside, annul and suspend orders of the Interstate Commerce Commission pursuant to the provisions of Paragraph 28 of Section 207 of the Judicial Code (U. S. C. A. Title 28, Section 41(28)).

This appeal was taken pursuant to Section 210 of the Judicial Code as amended (U. S. C. A. Title 28 Sections 47 and 47(a)), which said section provides as follows:

"Appeals to the Supreme Court under this section and Section 47 of this Title shall have priority in hearing and determination over all other causes except criminal causes [fol. 17] in that Court". (See U. S. C. A. Title 28 Sec. 47(a).)

Wherefore, Appellants pray that the Court advance this cause upon its docket so that the same shall have priority in hearing and determination over all other causes except criminal causes.

W. M. Borden, 2700 Fidelity Building, Kansas City, Missouri. Samuel J. Wettrick, 1 LaSalle Street Building, Chicago, Illinois, Attorneys for Appellants.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 143.

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON ET AL., APPELLANTS,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

APPELLANTS' BRIEF.

M. W. BORDERS,
WILFRED WIMMELL,
SAMUEL J. WETTRICK,
Counsel for Appellants.

October 25, 1941.

ERRATA.

1. Page 22 - in the third line from the bottom of the second paragraph "Kansas City" (where it first appears in said line) should be "St. Louis," so that the phrase "can transit on the 14¢ rate to *Kansas City,*" will be "can transit on the 14¢ rate to *St. Louis.*"

2. Page 52 - the first word of the sixth line should be "Commission" instead of "Court."

3. Page 66 - in the second paragraph of the quotation, the sentence beginning on line 9 which reads "the elevator storage capacity at the Missouri River" should be completed by adding the words, "cities is enormous in comparison with that found at Des Moines" and the following words: "such conditions do not obtain at Des that found at Des Moines" should be deleted.

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I. It appears from the reports and orders of the Interstate Commerce Commission that there is no difference in the transportation and transit service or the cost thereof as between transit at primary markets and at interior points, and hence that its orders requiring the primary markets to transit on higher rates than interior points (or permitting transit at interior points on lower rates than at the primary markets) are in violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act and are null and void ... 33

(a) Where, as here, the findings and orders of the Commission are based upon the application of erroneous rulings, not in accord with the law, such findings and orders are not binding upon the courts and will be set aside 33

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 143.

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON ET AL., APPELLANTS,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

APPELLANTS' BRIEF.

OPINION BELOW.

The opinion of the Court below (R. 737) is reported in 36 F. Supp. 865.

JURISDICTION OF THIS COURT.

This suit was brought under the provisions of Paragraph 28 of Section 207 of the Judicial Code (U. S. C. A., Tit. 28, Sec. 41 (28)) to enjoin, set aside, annul and suspend orders of the Interstate Commerce Commission. The suit was tried before a District Court composed of the Honorable Seth Thomas, Circuit Judge, the Honorable John C. Collet, District Judge and the Honorable Merrill E. Otis, District Judge, as required by the provisions of the Judicial Code (U. S. C. A., Tit. 28, Sec. 41 (28), 43, 44, 45, 46, 47, 47a). The three Judge District court dismissed the bill of complaint. The jurisdiction of this Court upon appeal is invoked because the Statutes expressly provide for an appeal to this Court (Sec. 210 of the Judicial Code as amended by the Acts of March 3, 1911, Ch. 231, 36 Stat. 1150, and of October 22, 1913, Ch. 32, 38 Stat. 220 (U. S. C. A., Tit. 28, Secs. 47 and 47a)).

STATEMENT OF CASE.

Nature of Suit.

This is an appeal from the judgment of a Three Judge District Court dismissing the suit brought by The Board of Trade of Kansas City, Missouri, The Merchants Exchange of St. Louis, The Minneapolis Traffic Association, The Omaha Grain Exchange, The St. Joseph Grain Exchange and a number of grain and milling companies and individuals under the provisions of the Judicial Code (27 U. S. C. A., Secs. 41 (28), 43, 45, 46, 47, 48) against the United States and the Interstate Commerce Commission to enjoin, set aside, annul and suspend certain orders of the Interstate Commerce Commission.[1]

---

[1]In the trial court the Board of Railroad Commissioners of the State of North Dakota, The Farmers Educational & Cooperative Union of America, North Dakota Division, The State of North Dakota, The Public Utilities Commission of the State of Idaho, Idaho State Grange, Inc., Board of Railroad Commissioners of the State of Montana, Texas Industrial Traffic League, Ft. Worth Grain & Cotton Exchange, Tex-O-Kan Flour Mills Company and The Corporation Commission of Oklahoma intervened.

The orders in question require that shippers of grain at a few so-called "Primary" markets pay substantially higher charges for the privilege of stopping grain in transit, for storing, milling or other processing, than other shippers at numerous other points are required to pay for exactly the same or similar service. The simple fact is that, as a result of the orders of the Commission, the primary markets are not permitted to transit on the same basis or at the same cost as other shipping points which are directly in competition with the primary markets. The primary markets involved in this action are Kansas City, St. Louis, Minneapolis, Omaha, St. Joseph, Atchison and Leavenworth.

The seriousness and injustice of the situation is illustrated by the following map which was introduced in evidence along with a number of other similar maps illustrating other and similar situations (R. 725).

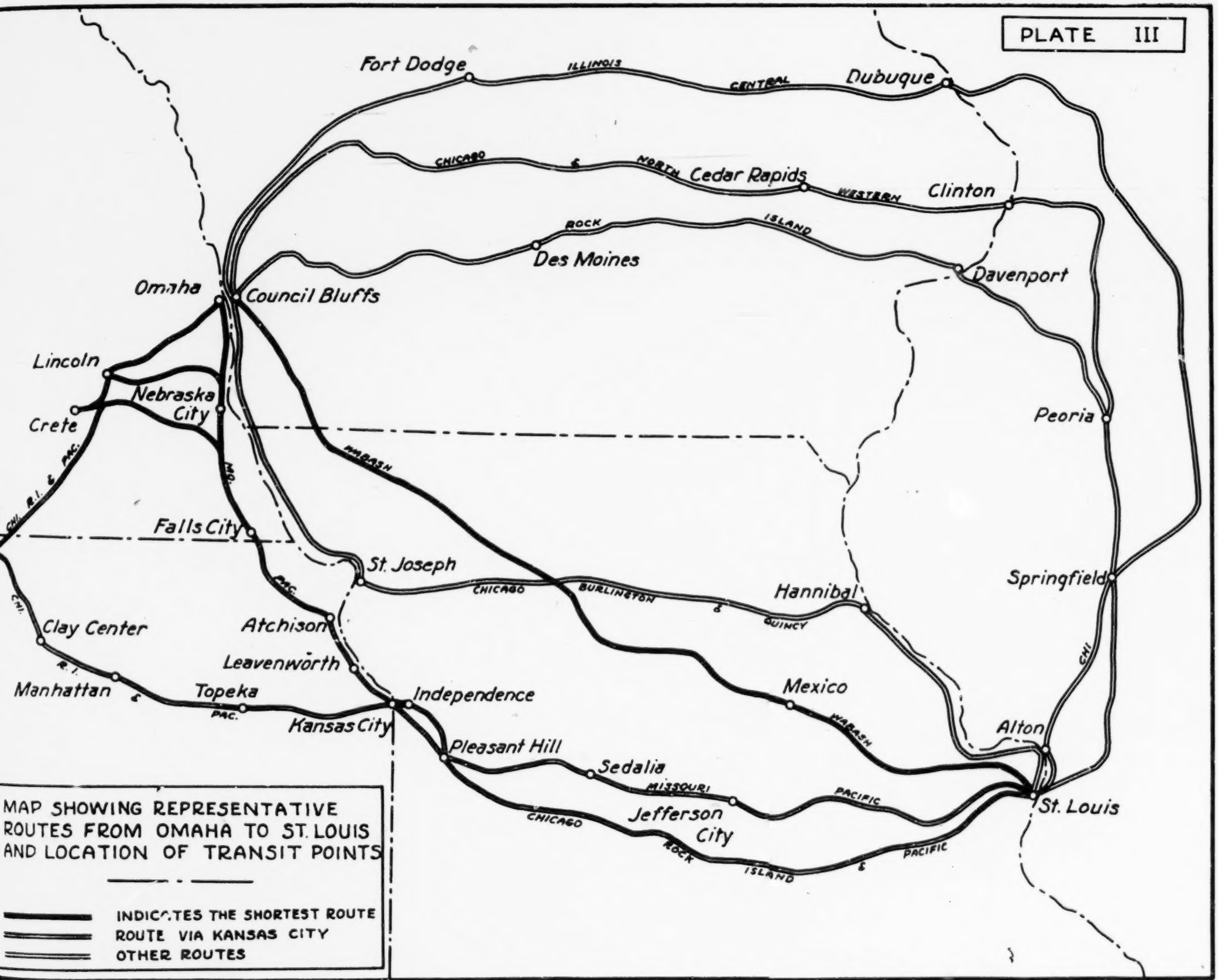
PLATE III
Fort Dodge
ILLINOIS CENTRAL
Dubuque
CHICAGO & NORTH WESTERN
Cedar Rapids
Clinton
ROCK ISLAND
Des Moines
Davenport
Omaha
Council Bluffs
Lincoln
Nebraska City
Crete
Peoria
WABASH
Falls City
St. Joseph
CHICAGO BURLINGTON & QUINCY
Hannibal
Springfield
Clay Center
Atchison
Leavenworth
Manhattan
Topeka
Kansas City
Independence
Mexico
Alton
Pleasant Hill
Sedalia
MISSOURI PACIFIC
Jefferson City
CHICAGO ROCK ISLAND & PACIFIC
St. Louis
MAP SHOWING REPRESENTATIVE ROUTES FROM OMAHA TO ST. LOUIS AND LOCATION OF TRANSIT POINTS
INDICATES THE SHORTEST ROUTE
ROUTE VIA KANSAS CITY
OTHER ROUTES

The foregoing map shows the principal routes from Omaha to St. Louis. The through rate for grain on all these routes is 14c[2] and shippers at any of the points shown may stop grain in transit for milling, storing or other transit purposes but if said grain is stopped in transit at Kansas City, Leavenworth, Atchison or St. Joseph, shippers at such points are required to pay a rate of 18 1/2c or 4 1/2c higher than their competitors at any of the other points, who pay 14c.

The Missouri-Pacific route through Atchison, Leavenworth and Kansas City is only a little longer than the most direct route, that of the Wabash, and there are numerous other routes which are much longer than that through Kansas City. Not only may all points on the Missouri Pacific route on both sides of Kansas City, Atchison and Leavenworth transit on the 14c rate, while Kansas City, Atchison and Leavenworth are held to the 18 1/2 rate, but points such as Ft. Dodge, Dubuque, Cedar Rapids, Des Moines, Davenport, Topeka, Manhattan and Lincoln may transit on the 14c rate, although the routes upon which such points are located are much longer than that of the Missouri Pacific. Moreover, the transit service and the physical incidents of the transit operation at all the points mentioned are exactly the same.

It is the contention of the appellants that this situation is one which is clearly unlawful and directly forbidden by the provisions of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act.[3]

Section 1 (5) forbids every unjust and unreasonable charge. Section 2 forbids any carrier from charging "a greater or less compensation for any service rendered" than it charges for "a like and contemporaneous service" * * * "under substantially similar circumstances and con-

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[2]All rates referred to in this brief are stated in cents per 100 pounds.

[3]Sections 1 (5), 2, 3 (1) and 15 (1) of the Interstate Commerce Act are set out in full on pages 31-32 of this brief.

ditions" and said section provides that any carrier so doing shall be deemed guilty "of unjust discrimination which is prohibited and declared to be unlawful." And Section 3 (1) provides that it shall be unlawful for any carrier "to subject any particular person * * * *transit point*, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Appellants also contend that because of the above statutes, no administrative findings, conclusions or justifications can excuse or justify such gross discrimination and that the Commission's orders which authorize and require such a situation are beyond the power of the Commission and are null and void.

It is unfortunate that this simple case of discrimination and of undue and unreasonable prejudice must necessarily come to this Court with a record consisting of 771 pages and as one phase of a comprehensive proceeding before the Commission involving many other questions, which proceeding has been before the Commission on many occasions since its first presentation in 1929. It was, however, necessary that such lengthy record be brought before the Court because the orders which result in the discrimination complained of are based upon and are the outgrowth and result of such proceedings and, since it was necessary that such record be presented to the trial court and be brought here on appeal, it is also incumbent upon appellants to set forth the historical development of this case so that this Court may understand just how the Interstate Commerce Commission ever came to authorize and provide for such a discriminatory situation. In doing so we will be as brief as possible. In this statement and in the following argument we shall point out the various reasons relied upon by the Commission in support of its conclusions and show the unsoundness of each. Nevertheless, at the outset, appellants desire to make it clear that we most earnestly contend that this is a simple case of unlawful discrimination and un-

due and unreasonable prejudice, palpably unjust and forbidden by the Interstate Commerce Act and that there is no room for administrative judgment in connection therewith. We respectfully and most earnestly request that this Court not lose sight of the simple case here involved, merely because the task of pointing out the reasoning of the Commission and its erroneous application of the law is a matter of some detail.

While the opinions upon which the questioned orders of the Commission are based are quite lengthy, as they cover many matters not relevant to the issues raised in this suit, the portions thereof directly covering the matters in controversy are relatively short. This Court will have a complete and fair picture of the case if it will read the following relatively short portions of the Commission's various opinions:

164 I. C. C., pp. 631-645 and pp. 653, 660, 661, 697, 698 (R. 39-53, 61, 68, 69, 105, 106);
173 I. C. C., pp. 513-517 (R. 236-241);
205 I. C. C., pp. 327-329, and pp. 333-343 (R. 303 305, 311-323);
215 I. C. C., pp. 85-93 (R. 532-542);

and the entire opinions in the formal complaint cases as follows:

223 I. C. C. 235 (R. 613);
229 I. C. C. 9 (R. 635); and
231 I. C. C. 793 (R. 648).

Primary and Interior Markets.

Kansas City (including Kansas City, Kansas), Omaha, St. Louis, Minneapolis, St. Joseph, Atchison and Leavenworth, wherein are located the places of business of the Appellants in this suit, are large terminal grain markets which annually receive, market and ship great quantities of grain and its products. The Appellants operate numerous large elevators at such markets for the

storage, cleaning, drying and other handling of grain and numerous plants for the conversion of grains into flour, feeds and various other products. They are in competition with each other and with persons and corporations doing a similar business at numerous so-called "interior points" in the territories adjacent to and surrounding the terminal markets.[4]

Transit.

The business of marketing grain and its products is founded upon the widespread use of the transit privilege. The term "transit" refers to the privilege of stopping a shipment of grain while in transit for the purpose of storing, milling, marketing or other handling with its subsequent reshipment after such handling, as though the shipment were a continuous movement and upon a rate applicable from point of origin to final destination. Grain is produced and marketed far in advance of its actual consumption and must be bought and held at intermediate storage points until needed. The transit privilege which has for a long time been recognized as necessary by the Interstate Commerce Commission allows grain to be bought and later sold without the imposition of price discounts for freight rate differences and permits competition upon even terms between dealers at the several intermediate handling points and with dealers at points of origin or destination.

Rate-Break Markets.

A very large part of the grain crop each year moves to and through the large primary terminal markets where the Appellants have their places of business. The rail-

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[4]It should be noted that some of the interior points, such as St. Louis, Cedar Rapids, Davenport, Dubuque, Des Moines and Lincoln, are considerably larger than some of the primary markets, such as Atchison and Leavenworth. In fact, St. Louis is larger than any of the so-called primary markets. All interior points mentioned in this brief have substantial grain and milling interests which are in competition with those at the primary markets.

roads have always competed actively for this business. While many of the carriers have lines extending through the principal markets, others have lines which have their western or eastern termini at these markets. These carriers cannot in most instances participate in carrying grain from the points of origin to destination because their lines do not extend that far. Carriers having their western termini at the markets share in the haul and the revenue therefrom to the extent that they can obtain the outbound movement from the markets after the grain has been stopped for transit purposes.

For many years grain rates via the primary markets consisted of the local rate applicable to the initial movement from point of origin to transit point and the applicable charge from the transit point to destination, known as the "transit balance," which consisted of the remainder of the through rate from the point of origin via the transit point to the destination. And for many years prior to the passing of the Hepburn Act carriers not having through lines accepted and carried grain from the primary market at the same "balances" as would be available to the through lines. In many instances the through lines carried grain for the "balances" available under the through rates of other through lines. Later proportional rates were established and such rates have been defined as parts of, or proportions, of through rates. In many instances the through rates to points beyond the terminal markets were thereafter constructed by adding to the inbound local rate a "proportional" rate and in such instances the balance of the through rate, or transit balance, was necessarily the same in amount as the proportional rate. In other instances the through rates were less than the combinations of local rates and proportionals, but in those instances shippers were allowed, by reason of the stopping in transit privilege, to reship at the transit balance and thereby obtain the application of the direct through rate.

As a result of the practice of constructing the through rates by adding the inbound locals to the outbound proportionals, rates were said to "break" on terminal markets and such markets are now referred to as "rate-break" markets. The breaking of rates at these terminal markets is directly attributable to the natural conditions existing at such markets, namely, their location with respect to grain producing areas, their situation with respect to the lines of various carriers, but especially because the existence of rail lines terminating at such points competing for the grain made some such arrangement necessary. Such breaking of rates is not the result of any order, practice or action of the Interstate Commerce Commission. The Commission has frequently recognized that the "rate-break" developed in the manner outlined above and that it is a natural development growing out of natural conditions existing at such terminal markets. Several of the Commission's decisions recognizing these facts will be discussed in the argument in this brief.

First Grain Case.

In January, 1925, Congress adopted a joint resolution known as the "Hoch-Smith Resolution" (49 U. S. C. A., Sec. 55). The cause for the adoption of this resolution was the depressed conditions in agriculture and under it the Interstate Commerce Commission was directed to make a thorough investigation of the rate structure in order to determine to what extent rates, charges and practices were unjust, unreasonable or unjustly discriminatory and to make such changes and adjustments in rates and practices as might be found necessary to correct existing defects. As a part of the Commission's task, it conducted an inquiry into the rates and practices affecting the transportation of grain and grain products. The Commission's report and order resulting from these hearings is known as the "First Grain Case" (*Grain & Grain Products*, 164 I. C. C. 619, R. 27). In this report and

order the Commission prescribed a general downward revision of grain rates. It found the existence of rates, as outlined above, referred to as the "dual system," consisting of (1) through rates based on the combinations of flat rates inbound from country points and proportional rates outbound to such gateways as Chicago and St. Louis; and (2) through or overhead rates less than the corresponding combinations was undesirable. The commission approved this system of rates, but provided that the rate-break combinations which it prescribed should be the exclusive basis of charge when transit is taken at the primary markets (164 I. C. C. 645, R. 53).

The rate combinations which were prescribed were made applicable to transit at both interior and primary markets, the primary markets paying the inbound flat rates plus outbound fixed proportionals, while the interior points were required to pay the same through rates, which, however, consisted of the inbound local rate to the transit point, plus a transit balance therefrom, which was in each case the difference between the combination and the inbound local. This is very important and a full understanding of this situation is necessary to a proper determination of the issues arising in this suit. The Court will readily see that no prejudice resulted to either primary or interior markets because of the foregoing action taken by the Commission because both shippers at primary and interior markets reached a given destination on the same through rate. The only difference between such markets was that the rates were made to "break" at the primary markets because rates had for many years broken at such markets and because, as the Commission found, the best interests of the producer, the consumer, the carrier and others are served by this practice.

However, in order to promote carrier competition the Commission also authorized a number of exceptions—rates applicable via the primary markets which were less than the prescribed combinations, but the Commission pro-

vided that while interior points could transit on these lower through rates the higher rate-break combinations should be the exclusive basis of charge at the primary markets and at interior points on routes through the primary markets (164 I. C. C. 645, R. 53).

The Commission made it perfectly clear that it was necessary that the restrictions should apply to interior points on routes through rate-break markets, as well as rate-break points, in order not to unduly discriminate against the rate-break markets.

The Commission said (173 I. C. C. 516, R. 240):

> "The restriction is laid on the intermediate points other than the market, as well as upon the market, in order not to discriminate against the market in favor of the other intermediate points. The reason for the restriction as to all intermediate points would be apparent if the combination rate over the higher route were published as an overhead rate, for then, manifestly, transit would be accorded only at the higher rate applicable over that route.
>
> "The fact that market may draw grain from a wider territory than the other intermediate points hardly affords justification for a difference in treatment."

An illustration will clarify the situation. The present proportional rate of 16c prescribed by the Commission from Kansas City to Chicago applies over numerous routes, some of which are shown on Plate I of Exhibit 9 (R. 723). Some of the routes (shown in red) pass from Kansas City through Omaha, another rate-break point, while others shown in black do not. The effect of the Commission's order was to require that Omaha and all interior points on the routes through Omaha, such as Falls City, Nebraska City, Des Moines, Davenport, Cedar Rapids and Dubuque, should pay the combination rate of 6 1/2c to Omaha and 16c thence to Chicago, or 22 1/2c, when the 16c rate also applies as a through rate from Kansas City via Omaha and the other points named to Chicago.

Interior Points on Non-Rate-Break Routes.

Although the Commission ruled that all interior points on routes through rate-break markets should transit on the same rates as the primary markets on such routes, its orders permitted other interior points not on such routes to transit on the lower through rates. Thus, in the illustration referred to above, any of the interior points lying on any of the routes between Kansas City and Chicago, except those passing through Omaha, such as Jefferson City, St. Louis, Decatur and Springfield, in Missouri and Illinois, could transit on the 16c rate, while, as already stated, the interior points on rate-break routes and the primary markets were required to pay 22 1/2c. The same situation existed in the illustrations given by the other Plates in the exhibit named (R. 723-728).

The effect of this ruling was to give competitors of the appellants, whose places of business are located on any of these other routes, a substantial advantage, as for instance, in the foregoing illustration, of 6 1/2c on grain shipped from Kansas City or points west thereof to Chicago.

Second Grain Case.

The carriers contested the validity of the rates prescribed in the First Grain Case. They filed a petition to enjoin enforcement of the order and this case was taken to the Supreme Court. This Court in *Atchison, Topeka and Santa Fe Railway Co.* v. *United States,* 284 U. S. 248, held that the order of the Commission should be vacated because the Commission denied petitions of the carriers for further hearing designed to show, by bringing the record down to date from the close of the original hearings in September, 1928, that general economic conditions had so changed as to make the Commission's order unresponsive to current conditions. As a result of the Supreme Court's decision, the Commission reopened the proceedings as to all issues, including the

effects upon various parties of the Part 7 adjustment. The decision of the Commission resulting from this hearing is known as the "Second Grain Case" (*Grain & Grain Products*, 205 I. C. C. 301, R. 268). The Commission revised the rate levels, but affirmed its original position that the combination of local and proportional rates should be the exclusive basis of charge when transit is taken at terminal markets or at interior points on routes through such markets, notwithstanding the existence of lower through rates.

Commission Reverses Previous Rulings.

On March 4, 1936, the Commission, upon further consideration of the record taken in connection with the report on further hearing, reversed its original view and held that interior points on routes passing through the primary rate-break markets should be permitted to transit on the lower through rates and would not be held to the higher rate-break combinations (*Grain & Grain Products*, 215 I. C. C. 93, R. 541). Thereby the Commission lifted the restriction from the interior points, although such points were located on the same routes and received exactly the same service as the primary markets and although it had theretofore on two separate occasions positively and emphatically held that such interior points should be subject to the same restrictions as the rate-break markets in order not to discriminate unduly against the latter.

The effect of this was, to again refer to the illustration given on Plate I of Exhibit 9 (R. 723), to permit all interior points on the routes through Omaha, such as Falls City, Nebraska City, Des Moines, Davenport, Cedar Rapids and Dubuque, to transit on the proportional rate of 16c from Kansas City to Chicago, while Omaha must still pay the combination of 22 1/2c, even though the shipments transited at the other points may move over the identical routes through Omaha. Such action greatly in-

creased and intensified the discrimination against the primary markets.

In reversing its position, the Commission stated that a modification of its previous ruling would have to rest upon "a substantial difference in conditions affecting the interior transit points and rate-break markets" (215 I. C. C. 90, R. 538). While the Commission said that there must be a substantial difference in conditions, it found no difference in transportation services and found that the mechanics of transit under the rate-break and under the through rates were exactly the same.

It sought to justify the discrimination against the primary markets because it said that under the rate-break existing at the primary markets, such markets enjoyed a benefit from the fact that outbound shipments were always on a definitely published constant factor. It was said that because of this situation shippers at the rate-break markets enjoyed a selection of out-bound carriers which did not exist at other points. 215 I. C. C. l. c. 91 (R. 538). Basing its opinion upon this alleged advantage, the Commission said that a difference in treatment between rate-break markets and interior points was justifiable.

Appellants will show in the argument that any advantages existing because of the rate-break cannot constitute a lawful basis for a difference in rates, as such advantages, if any, are due entirely to the location and facilities of such markets (which give rise to the rate-break) and the Courts and the Commission have held that they cannot be off-set or equalized. It will be shown that the Commission in authorizing different charges for transit because of these considerations has exceeded its lawful powers and has created and upheld gross discrimination and undue prejudice without any lawful basis therefor.

Now the reason for the extension of the lower through rates to all points on rate-break routes, except the primary markets was solely for the purpose of removing these in-

terior points from the discrimination which the Commission said existed against them, because they had been held to the higher combinations while other interior points on different routes enjoyed the lower rates (215 I. C. C. 89, 93, R. 536, 541).

By this extension shippers at all interior points, although such points were on the same routes as the primary markets and although they were receiving exactly the same transportation and transit service, were permitted to transit on rates substantially lower than those applicable to their immediately adjacent competitors at the primary markets. This extension was not for the purpose of contributing to the elimination of the dual system or of stabilizing the rate structure or of preserving the revenue of the carriers (matters which caused the Commission to provide that the primary markets should transit exclusively on the rate-break combinations. 164 I. C. C. 633-645, R. 41-53). The Commission was, in fact, relaxing the absolute rate-break rule, not because it found it was too strict, but simply in order to aid interior points, although to do so was to greatly increase the burden and discrimination against the primary markets, and in spite of the fact that the Commission had theretofore held on two separate occasions that it was necessary that the same restriction be applied to intermediate points on rate-break routes as was applied to the primary markets "in order not to discriminate against the market in favor of the other intermediate points" (R. 240), and even though the Commission had held that "the fact that the market may draw grain from a wider territory than the other intermediate points hardly affords justification for a difference in treatment" (173 I. C. C. 516, R. 240).

Direct and Indirect Routes.

Although the Commission has referred to the routes through rate break markets as "indirect" routes and to the other routes not through such markets as the "direct"

routes, this is most misleading and the difference in rates prescribed by the Commission is actually based upon the fact that the route passes through a rate break market, rather than upon any greater circuity in the one route over the other, or any difference in the nature or quantum of the service. As stated by the Commission in 223 I. C. C. 235, at page 241, "in some of the situations presented the shortest routes are through the rate-break points." There are various routes through the rate-break points which are much shorter than other routes not through such points. This may be illustrated by reference to the map designated Plate III (R. 725), already set out heretofore in this brief, which shows that the shortest line from Omaha to St. Louis is the Wabash Railroad, which does not pass through a rate-break point. The socalled "indirect" route through Kansas City is very little longer than the Wabash and is shorter than any of the other non-rate-break routes on which such important points as Fort Dodge, Dubuque, Des Moines, Cedar Rapids, and Davenport are located.

The distance from Omaha to St. Louis over the route of the Chicago & Northwestern Railway and the Chicago and Alton, via Cedar Rapids, Iowa, and Peoria and Springfield, Illinois, is 626 miles. The distance from Omaha to St. Louis, over the Missouri-Pacific route through Atchison, Leavenworth and Kansas City is 485 miles. Yet points like Cedar Rapids, Peoria and Springfield, located on the longer route of the Chicago & Northwestern and the Alton can transit on the 14c rate, while Atchison, Leavenworth and Kansas City, located on the much shorter route, must transit on the 18 1/2c rate. Similarly, the distance from Omaha to St. Louis, over the Chicago, Rock Island & Pacific Railway, by way of Des Moines and Davenport, is 573 miles, yet those points can transit on the lower 14c rate.

There are many other similar situations, as is apparent from the maps introduced in evidence (R. 723-728).

Discrimination Now Existing.

As the result of the Commission's orders, appellants and others doing business at the primary terminal markets have been required to pay substantially higher rates when transit is taken at such terminal markets than their competitors are required to pay when transit is taken at interior points on the same and other routes and have thereby been subjected to flagrant discrimination.

The situation created by the Commission's orders is clearly presented by the maps which were introduced in evidence (R. 723-728), one of which is set out at the beginning of this statement. Each of these maps illustrates typical rate situations and shows a number of routes and transit points located thereon. These routes are merely representative and there are numerous other situations where the same difference in transit rates exist in favor of interior points.

As shown by the maps, some of the routes pass through primary markets while others do not. In the reports of the Commission those routes passing through primary markets are called the "indirect routes" and those which do not, the "direct routes." As heretofore pointed out this is misleading because the routes through the primary markets are not always indirect routes. However, the relative distances over the different routes have nothing to do with the rates. The rates apply over all the routes and all interior points whether on direct or indirect routes, or whether or not on routes passing through rate-break markets, are permitted to transit on lower through rates.

Plates I and II (R. 723-725) show numerous routes, some of which run from Kansas City through Omaha and *vice versa*. All points on any of the routes can transit on the 16 cent rate except Kansas City, Atchison, Leavenworth, St. Joseph, and Omaha, and shippers at these markets must pay the combination of 6 1/2c (the proportional

rate between Omaha and the other markets named) and 16c, or 22 1/2c, a difference of 6 1/2c.

Among the interior points that can transit on the 16c rate from Kansas City to Chicago on routes through Omaha (Plate I) (R. 723) are Lincoln and Crete, Nebraska, although this involves a substantial back-haul, and Des Moines, Cedar Rapids, Davenport and Dubuque. On routes not through a rate-break point Springfield and St. Louis, Missouri, Springfield and Decatur, Illinois, and other points can transit on the 16 cent rate, while Omaha must pay 22 1/2c.

Among the interior points that can transit on the 16c rate from Omaha to Chicago on routes through Kansas City (Plate II) (R. 724) are Independence, Missouri, just outside the switching limits of Kansas City, Sedalia, Jefferson City, and St. Louis, Missouri, Alton and Springfield, Illinois. All of these can transit on the 16 cent rate, while Kansas City, Atchison, Leavenworth, and St. Joseph, merely because they are rate-break points, are denied the right to do so and must pay 22 1/2 cents. Other interior points shown on this map not located on rate-break routes are Des Moines, Dubuque, Cedar Rapids, Clinton, Davenport, Burlington, and Hannibal, all of which can transit on the 16 cent rate.

In connection with Plate II (R. 724), we wish to point out that the effect of the Commission's orders is to require the intermediate primary markets to pay more than the rate-break combination on the first primary markets. The rate from Holdrege, Nebraska, to Omaha is 17 1/2 cents. Any interior point shown on any of the routes between Omaha and Chicago can transit grain from Holdrege, Nebraska, to Chicago by paying the proportional rate of 16 cents from Omaha in addition to the inbound rate of 17 1/2 cents, or a total of 33 1/2 cents. On the other hand, Kansas City, located on several of these routes, in order to transit grain from Holdrege, is required to pay 22 1/2 cents in addition to the 17 1/2 cents from Holdrege to Omaha, or a total of 40 cents.

Now the rate-break combination of 33 1/2 cents was prescribed by the Commission as a reasonable one-factor through rate, and yet Kansas City must pay 40 cents in order to transit although located on a route over which the lower rate applies, and that notwithstanding the fact that Independence, Sedalia, Jefferson City, and numerous other points on the route through Kansas City can transit on the rate of 33 1/2 cents. This is but an illustration of the situation which exists whenever transit is taken at an intermediate primary market.

Plate III (R. 725) (already discussed at the beginning of this statement) shows some of the routes from Omaha to St. Louis over which a proportional rate of 14 cents applies. As already pointed out, there is only one shorter route than through Kansas City and that is the Wabash. All other routes are substantially longer. Yet any of the points shown, including Fort Dodge, Dubuque, Cedar Rapids, Clinton, Des Moines, Davenport, Hannibal, Peoria, and Springfield can transit on the 14 cent rate, whereas Kansas City, Atchison, Leavenworth, and St. Joseph, merely because they are rate-break points, are required to pay a combination of 6 1/2 cents plus 12 cents (the proportional rates from those points to St. Louis) or a total of 18 1/2 cents. All of the points shown on the circuituous route of the Rock Island Railway in Nebraska and Kansas, such as Lincoln and Topeka, can transit on the 14 cent rate to Kansas City, while Kansas City, on the almost direct line of the Missouri Pacific and the Rock Island must pay 18 1/2 cents.

Plate IV (R. 726) shows routes from San Antonio, Texas, to St. Louis, some of which are via Kansas City. The rate from San Antonio to St. Louis is 46 cents, which applies over the routes through Kansas City. Fort Worth, Enid, Wichita, Topeka, Muskogee, Sedalia, Jefferson City, and even Hutchinson and Salina, which involve substantial back-hauls, can transit on the 46 cent rate on the route via Kansas City to St. Louis, whereas Kansas City must pay a combination of 42 cents from San Antonio

to Kansas City and 12 cents from Kansas City to St. Louis, or 54 cents for exactly the same transportation and transit service.

A similar situation is shown by Plate V (R. 727) which is another illustration of routes from country points, one of which is via Kansas City. The rate from Indianola to St. Louis is 20 cents, on which Des Moines, Keokuk, Pleasant Hill, and other points can transit, whereas Kansas City must pay a rate of 29 cents for the same service, though it is on the same route as Pleasant Hill.

The evidence in the records before the Commission (which were transmitted to this Court pursuant to stipulation of counsel) shows that the situations complained of are very important, that in the Omaha-Kansas City situation alone before the orders in question Kansas City dealers annually handled large quantities of wheat from Omaha, estimated by various witnesses as high as 8,000,000 to 10,000,000 bushels annually, but never less than 500,000 bushels (See record in case No. 27628, pp. 58, 59, 82, 216, 414, 638, 745, 1001). The evidence showed that since the Commission's orders became effective on July 1, 1935, the rate penalties applicable when transit is had at Kansas City cannot be overcome and that very little of the business formerly done now exists (See record in case No. 27628, pp. 84, 217, 229, 423, 529, 805, 638, 745, 1001, 1486).

It is of the greatest importance that there should be an interchange of wheat between Omaha and Kansas City for milling purposes. Under normal conditions, Nebraska produces low protein wheat, while Kansas produces high protein wheat, and both are necessary for blending purposes to make the different varieties of flour (See record in case No. 27580, pp. 8, 16, 27). The existence of this situation was recognized by the Commission (223 I. C. C. 239, R. 618).

The same is true of the other situations. Because of the proportionals from Omaha to St. Louis, Kansas City

shippers have lost their business because they cannot compete without transit on the Omaha rates (pp. 805-810, 843).

The state of Iowa is one of the most important producing sections for coarse grains. The Kansas City market has always been in competition with the St. Louis and interior markets. Because of the situation resulting from the Commission's orders and illustrated by Plate V (R. 727) the Kansas City shippers have lost their business to their interior and other competitors (pp. 804, 805, 809-812, 1508).

No Difference in Service or the Cost Thereof.

This substantial difference in rates exists although the transit service which shippers at the terminal markets receive (and the cost thereof to the railroads) is exactly the same as or comparable to that received by shippers at interior points. Nowhere in any of the Commission's opinions did it find any difference in the nature of the transit service or the cost thereof. On the contrary, as will be more fully developed in the argument the Commission found that the transportation service involved in transit, the cost thereof, and the mechanics of transit are the same whether the transit is on the rate break combinations or otherwise (164 I. C. C. 634, R. 42; 215 I. C. C. 90, R. 538).

Complaints Filed and Relief Granted.

The Board of Trade of Kansas City, the Omaha Grain Exchange, the Atkinson Milling Company and other milling companies filed complaints with the Interstate Commerce Commission seeking relief from the prejudicial rates and practices (R. 586-613). On July 27, 1937, the Commission filed and entered its report and order wherein it found that its findings and orders previously entered should be modified authorizing restricted departures from the exclusive application of proportional rates at rate-

break points. In that report the Commission found that the granting of the relief sought would not change a single rate in effect but would merely permit the terminal markets to transit on an equality with interior transit operators on the same rates over the same routes (223 I. C. C. 239, R. 618). It further found that the granting of this relief would not adversely affect the rate structure (223 I. C. C. l. c. 239 and 244, R. 618, 624). In that report, however, the Commission did not require the carriers to grant the authorized relief. Its order was permissive and after its adoption the carriers refused to comply.

Subsequent Denial of Relief.

Upon the failure of the carriers to grant any relief the Complainants sought a mandatory order. This was refused in an opinion in which a majority of the Commission reversed the position taken in 223 I. C. C. 235, and refused to grant any relief whatsoever (229 I. C. C. 9, R. 635). On reargument a majority of the Commission again denied relief (231 I. C. C. 793, R. 648).

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The points raised by the assigned errors were summarized in appellants' statement of points upon which it intends to rely (R. 768) and the same are here set forth as its specifications with appropriate reference to the assigned errors (R. 757) upon which they are based.

1. The District Court erred in not holding that it appears from the face of the record that there is no difference in the transportation and transit service or the cost thereof as between transit at primary markets and at interior points and hence that the orders of the Commission requiring the primary markets to transit on higher rates than interior points (or permitting transit at interior points on lower rates than at the primary markets) are in violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act and are null and void (1, 2, 14, 15, 20, 47, 48, 49, 50, 62, 64).

2. The District Court erred in not holding that the grounds upon which the Commission denied the primary markets the right to transit on the same basis as interior points are insufficient as a matter of law to constitute a lawful basis or justification for the violations of the Act inherent in and resulting from the decisions and orders of the Commission (11, 51, 53, 54).

3. The District Court erred in not holding that the grounds upon which the Commission refused to grant appellants any relief from the discrimination and prejudice against them and against the primary markets and denied their complaints, are insufficient as a matter of law to constitute a lawful basis or justification for such orders (17, 55, 56, 57, 58).

4. The District Court erred in not holding that the orders of the Commission are so unjust, unreasonable and arbitrary as to render them null and void (12, 60).

5. The District Court erred in failing to recognize and give effect to the foregoing propositions and in not holding that the orders of the Commission, in so far as they prohibit transit at the primary markets on the same basis as at interior points, are unlawful, null and void (3, 4, 5, 6, 7, 8, 16, 17, 19, 23, 24, 25, 62, 64).

SUMMARY OF ARGUMENT.

1. Where as here the reports disclose discrimination that is palpably unjust and forbidden by the Interstate Commerce Act, this court will grant relief regardless of any contrary findings of the Commission (See discussion and authorities under Point I(A)).

2. Where the reports of the Commission disclose that it has exceeded its powers and misapplied the law, its findings, conclusions and orders are void and of no effect (See discussion and authorities under Point I(A)).

3. The Commission did not find any difference in the transit service or the cost thereof as between primary and interior points and its orders prescribing higher charges for transit at primary points subject shippers at such points to unjust and unreasonable charges, unjust discrimination and undue and unreasonable prejudice in violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act. The courts and the Commission have frequently held that such differences in charges as are here prescribed cannot be sustained unless there is a difference in the transportation service or the cost thereof, which the findings of the Commission show does not exist in this case (See discussion and authorities under Point I(B)).

4. The grounds upon which the Commission denied the primary markets the right to transit on the same basis as interior points are insufficient as a matter of law to constitute a lawful basis or justification for the violations of the Act inherent in and resulting from the decisions and orders of the Commission. The Commission's holding in 215 I. C. C. 83, l. c. 90 (R. 538) that there is a substantial difference in conditions affecting interior transit points and rate-break markets which justifies the

difference in treatment prescribed by the Commission was based upon other than lawful transportation considerations and cannot be sustained. As shown by its opinions, the Commission attempted to justify such difference in treatment because rates break at the primary markets, wholly disregarding the fact that rates break at such points because of their advantageous geographical location and their situation with respect to the lines of various railroads, and wholly ignoring and disregarding the fact that the courts, as well as the Commission, have repeatedly held that the Commission does not have the power to equalize or offset any such competitive advantages of one point over another by allowing more favorable rates to the one over the other as the Commission did here (See the discussion and authorities under Point II(A) 1 and 2).

5. Even if any advantage exists because the primary markets have the rate-break or because of any other factors, this is no lawful basis for creating a discriminatory and prejudicial adjustment for the purpose of offsetting the alleged advantages, as it is the function and purpose of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act to uproot all discriminations rather than to create discrimination for the purpose of offsetting advantages of other points (See the discussion and authorities under Point I(A) 3).

6. The Commission sought to excuse the discrimination against the primary markets by saying there was a difference in the "forms of transit" as between such markets and interior points, wholly ignoring the fact that its opinions show that there is no difference in the forms of transit but that the mechanics of transit, the purpose of transit, the cost thereof to the railroads and every physical incident of the transit operation is exactly the same whether transit is taken at the primary markets or at other points (See the discussion and authorities under Point III).

7. The grounds upon which the Commission refused to grant complainants any relief from the discrimination against them and against the primary markets and denied their complaints are insufficient as a matter of law to constitute a lawful basis or justification for such orders. The Commission's position that the relief sought should be denied because to allow it would disturb and disrupt the rate structure, reestablish the dual system and impose an additional burden upon the carriers, is insufficient in law to justify the Commission's refusal to remove the existing discrimination as the courts have frequently held that it is no basis for denying relief from a substantial discrimination that to grant such relief will disturb the rate structure or affect the revenue of the carriers (See discussion and authorities under Point III(A) 1).

8. The opinions of the Commission show that if it grants the relief sought it has the power to keep the situation under control so that the unrestricted dual system is not reestablished and the rate structure not unduly affected (See discussion and authorities under Point III(A) 2).

9. The dissenting opinions of Commissioners may be considered in determining the basis for the Commission's orders and these show that the majority applied erroneous legal principles and exceeded their lawful powers (See discussion and authorities under Point IV).

10. The opinion of the trial court shows that it wholly overlooked and ignored the principal issue, viz., whether such a substantial difference in transit charges is lawful under the provisions of the Interstate Commerce Act where the transit service and the cost thereof is the same at both primary and interior markets. The opinion also shows a number of fundamental misconceptions which directly contributed to the erroneous result reached by that court (See discussion and authorities under Point V).

Pertinent Provisions of the Interstate Commerce Act.

"Sec. 1, par. (5): *Just and reasonable charges required; classification of messages, and rates; exchange of services.* All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *

"Sec. 2: If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

"Sec. 3 (1): It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Sec. 15 (1): Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for in-

vestigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property or for the transmission of messages as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

ARGUMENT.

I.

It Appears from the Reports and Orders of the Interstate Commerce Commission That There Is No Difference in the Transportation and Transit Service or the Cost Thereof As Between Transit at Primary Markets and at Interior Points, and Hence That Its Orders Requiring the Primary Markets to Transit on Higher Rates Than Interior Points (or Permitting Transit at Interior Points on Lower Rates Than at the Primary Markets) Are in Violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act and Are Null and Void.

(a) Where, as here, the findings and orders of the Commission are based upon the application of erroneous rulings, not in accord with the law, such findings and orders are not binding upon the courts and will be set aside.

While this Court will ordinarily accept the Commission's findings of facts and will not attempt to substitute its opinion for that of the Commission upon administrative questions, it will not permit the Commission's general findings and conclusions to prevent the setting aside of orders which are the result of the application of erroneous rules of law or which are in excess of the powers of the Commission.

Mitchell v. *U. S.*, 85 L. Ed. (Adv.) 811.

The Interstate Commerce Commission v. *Union Pacific R. R. Co.*, 222 U. S. 541, 56 L. Ed. 608.

Southern Pacific Company v. *Interstate Commerce Commission*, 219 U. S. 433, 55 L. Ed. 283.

Ann Arbor R. Co. v. *United States*, 281 U. S. 638, 74 L. Ed. 1098.

Texas & Pacific R. R. Company v. *United States*, 289 U. S. 627, 77 L. Ed. 1410.

Alton R. R. Company v. *United States*, 287 U. S. 229.

In *Mitchell* v. *United States, supra,* decided on April 28, 1941, this Court held that the general findings of the Commission of the absence of undue and unjust discrimination were not binding upon the Court and would be disregarded where the facts showed an obvious discrimination forbidden by Section 3 (1) of the Interstate Commerce Act. The opinion of the Commission in that case is reported in 229 I. C. C. 703. Mitchell, a colored person, claimed that the failure of the Chicago, Rock Island & Pacific Railway Company, to furnish him with the same or equivalent facilities as those furnished to white passengers was an unlawful discrimination forbidden by the provisions of the Interstate Commerce Act. The Commission held that the discrimination and prejudice was not unjust and undue. After reviewing the facts, the Commission said as follows (229 I. C. C. l. c. 711):

> "In these circumstances, we find that the present colored passenger coach and the Pullman drawing rooms meet the requirements of the Act; and that, as there is comparatively little colored traffic and no indication that there is likely to be such demand for dining car and observation parlor car accommodations by colored passengers as to warrant the running of any extra cars or the construction of partitions, the discrimination and prejudice is plainly not unjust or undue. Only differences in treatment that are unjust or undue are unlawful and within the power of this Commission to condemn, remove and prevent. The complaint will be dismissed."

The Court held that such findings by the Commission were not binding upon it and would not prevent it from applying the provisions of the statutes to a clear case of discrimination and prejudice. The Court, in a unanimous opinion by Chief Justice Hughes, said that the discrimination was palpably unjust and forbidden by the Act. It was said 85 L. Ed. (Adv.) 815, 816:

> "We have repeatedly said that it is apparent from the legislative history of the Act that not only was the evil of discrimination the principal thing aimed

at, but that there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. Shreveport Case (*Houston, E. & W. T. R. Co.* v. *United States*), 234 U. S. 342, 356, 58 L. Ed. 1341, 1350, 34 S. Ct. 833; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 749, 750, 75 L. Ed. 672, 679, 680, 51 S. Ct. 297; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 512, 513, 75 L. Ed. 1227, 1237, 1238, 51 S. Ct. 505. Paragraph 1 of Section 3 of the Act says explicitly that it shall be unlawful for any common carrier subject to the Act 'to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.' 49 U. S. C. A., Section 3.' * * *

"We take it that the chief reason for the Commission's action was the 'comparatively little colored traffic.' But the comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment, a right specifically safeguarded by the provisions of the Interstate Commerce Act. We thought a similar argument with respect to volume of traffic to be untenable in the application of the Fourteenth Amendment. We said that it made the constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of that right is that it is a personal one. *McCabe* v. *Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69, *supra*. * * *

"On the facts here presented, there is no room, as the Government properly says, for administrative or expert judgment with respect to practical difficulties. It is enough that the discrimination shown was palpably unjust and forbidden by the Act."

The principles applied in the foregoing case are directly applicable here. The discrimination complained of by appellants is as palpably unjust and forbidden by the Act as it was in the Mitchell case. The findings of the Commission to the effect that there was no unjust or undue discrimination and prejudice are the same in both cases. Neither in the Mitchell case, nor in this case, should

these general findings of the Commission be permitted to override the provisions of the Interstate Commerce Act which unequivocally forbid the type and character of discrimination and prejudice existing in this case.

In *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 56 L. Ed. 308, the Supreme Court said (222 U. S. l. c. 547):

> "There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Int. Com. Com.* v. *Ill. Cent.*, 215 U. S. 452, 470; *Southern Pacific* v. *Int. Com. Com.*, 219 U. S. 433; *Int. Com. Com.* v. *Northern Pacific*, 216 U. S. 538, 544; *Int. Com. Com.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 174."

This Court has frequently set aside orders of the Commission in cases involving facts much like those in this case. In *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 55 L. Ed. 283, it was held that an order of the Interstate Commerce Commission setting aside rates on lumber was void where it appeared from the opinions that the exclusion of shippers at Portland, Oregon, from the benefit of the reduced rate was based by the Commission upon the erroneous assumption that

it had the right to protect lumber interests from the consequences of a change in rates and could adjust the rate schedule accordingly. Upon reviewing the facts, opinions and evidence, the court concluded as follows (l. c. 449):

> "* * * we are of opinion that the face of the opinion and the order so additionally serve to make manifest the situation as to render it unnecessary to do more than briefly advert to those subjects. While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned, we think when the opinion is considered as a whole, in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right, under the law, to protect the lumber interests of the Willamette valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate, which had prevailed for some time, to a just and reasonable charge for the service rendered for the future. Manifestly, this was deemed by the Commission to be the power which was being exerted, since Mr. Commissioner Harlan, joined by the Chairman of the Commission, dissented on the ground that the order was an exertion of a power not possessed, to give effect to a supposed equitable estoppel, and no language was inserted in the opinion to indicate to the contrary."

In *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railway Co.*, 294 U. S. 499, 79 L. Ed. 1023, an order of the Commission annulling scheduled rates filed by a carrier was enjoined despite general findings of the Commission that the proposed rates would be unreasonable and in violation of certain specified sections of the Act. The Court, upon examining the Commission's opinions, found that they were based upon a desire to preserve the rate structure rather than upon proper transportation considerations. The Court said (294 U. S. l. c. 506):

"The statement in the second of these paragraphs that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated. Cf. *Florida* v. *United States, supra* (282 U. S. 213, 75 L. Ed. 303, 51 S. Ct. 119); *Southern P. Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 449, 55 L. Ed. 283, 31 S. Ct. 298.

* * * * * * *

"Subjected to these tests, the finding by the Commission that the new rates are unreasonable is seen to be nothing more than a deduction from the paragraph immediately preceding, wherein we learn that the schedule, if put into effect, will disrupt the rate structure in Indiana and related areas and disturb groupings and differentials maintained for many years. This brings us to the question whether such disruption and disturbance may be deemed a sufficient reason for taking from a carrier the privilege of reaching out for a larger share of the business of transportation and initiating its own schedule to help it in the struggle.".

The court ruled that the disruption or disturbance of the rate structure was an insufficient basis for the Commission's order and after considering the opinions at some length held that the order should be set aside.

The report reviewed by the Supreme Court in *Ann Arbor Railroad Co.* v. *U. S.*, 281 U. S. 658, 74 L. Ed. 1098, contained a similar general finding and in holding this insufficient the court said (281 U. S. l. c. 666):

"* * * True, in both the original and supplemental opinions it is said that the existing rates are unreasonable, but the opinions taken as a whole show that this means the rates were deemed unreasonable under the joint resolution when construed as the commission construed it, and not that they were deemed unreasonable under Sec. 1 (5) or Sec. 3 (1) of the Interstate Commerce Act. Throughout the opinions it is manifest that the commission was testing the

reasonableness and validity of the rates by considerations not applicable under those sections but believed by it to have been brought into the problem by the resolution."

(b) The Commission did not find any difference in the transit service or the cost thereof as between primary and interior points and its orders accordingly subject the primary markets to unjust and unreasonable charges, unjust discrimination and undue and unreasonable prejudice in violation of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act.

The pertinent provisions of the Interstate Commerce Act have been heretofore set out (pp. 31-32). Section 3 (1) specifically prohibits the granting of transit at one point on a more favorable basis than at another point. A more simple instance of a violation of such provision and of unreasonable charges, unjust discrimination and undue prejudice than that complained of in this suit can hardly be found. Here the transportation services rendered to complainants at terminal markets and to their competitors at other markets are exactly the same. The grain moves from the same origins over the same rails to the same destinations. The only difference is the point of stopover. If stopped at one of the primary markets, shippers are, in the instances complained of, compelled to pay substantially higher charges than their competitors are required to pay, although they may be immediately adjacent to such markets and although they receive exactly the same service and the cost thereof to the railroads is exactly the same.

The largest elevator in Greater Kansas City is located at Turner, Kansas, just inside the switching limits of Kansas City. If the Western boundary of the Kansas City switching limits were moved a few hundred feet, this elevator would automatically become entitled to transit on the through rates instead of the higher proportional rates applicable to Kansas City. Independence, Missouri, a few miles out of Kansas City, enjoys transit on the direct through rates, while Kansas City shippers must pay the higher charges.

The Commission did not claim that there is any difference in the transit service or the cost thereof which would support or justify this difference in treatment. Nowhere, in any of its opinions, is there any finding indicating or showing that there is any difference in the transportation service or its cost as between primary and interior points. If there had been any evidence of any difference in the transportation service incident to transit or the cost thereof, it is obvious that the Commission would have made a finding based upon such evidence. Such findings as appear in the Commission's reports are to the contrary. The Commission found that the mechanics of transit under the rate-break combinations prescribed for the primary markets are the same as under the through rates with transit balances applicable at interior points.

In 215 I. C. C. at page 90 (R. 538), the Commission said:

> "Transit permits of the drawing of grain into the transit point, and of the later outbound shipment of an equivalent tonnage of that kind of grain or its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the inbound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the inbound grain (or its equivalent in tonnage) or its products. When the outbound shipment is tendered the inbound freight bill is surrendered as authority for the charging on the outbound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the inbound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination.
>
> "The foregoing are the mechanics of transit also under the rate-break combination, except that the outbound shipment under that combination is on a definitely published constant factor, instead of on the

unpublished and varying difference between the 1-factor rates to the transit point and to final destination. But there is a substantial difference in the effects of the transit operation under the two bases of through charge, due to the inherent difference in the character of the 1-factor through rates with transit and the rate-break combinations."

And in 164 I. C. C. at page 634 (R. 42) the Commission said that all the mechanics and incidents of transit on transit balances and transit on the proportional rates are the same. It is true that this statement was made with reference to transit on the proportionals and transit on the through rates at primary markets. But there is no difference in the service, or the cost of transit, on the through rates as between primary markets and interior points.

It is perfectly clear under the decisions that the difference in treatment which the Commission prescribed cannot be justified or supported unless there is a real and substantial difference in transportation considerations. It has been universally held by the courts and the Commission that any difference in treatment, in so far as transit is concerned, must be based upon a difference either in the transportation service rendered, its costs or upon other transportation conditions. This is well put in the case of *United States* v. *Illinois Central Railroad Company*, 68 L. Ed. 417, 263 U. S. 515.

> "It is true that the law does not attempt to equalize opportunities among localities (*Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46, 56 L. Ed. 83, 87, 32 Sup. Ct. Rep. 22); and that the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference (*Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445, 59 L. Ed. 1036, 1041, 35 Sup. Ct. Rep. 645). To bring a difference in rates within the prohibition of Sec. 3, it must be shown that the discrimination practised is unjust when measured by the transportation standard. In other words,

the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions."

The charging of higher rates to some shippers than to others under similar circumstances is a violation of Section 1 (5) of the Interstate Commerce Act.

Penn Anthracite Mining Co. v. *Delaware & H. R. Corporation*, 16 Fed. Supp. 732, affirmed 91 F. 2d 634; cert. den. 302 U. S. 756, 82 L. Ed. 585.

Interstate Commerce Commission v. *Railway Co.*, 85 Fed. 107.

Whether rates charged by a carrier are just and reasonable is generally tested before the Commission by comparison with other rates for similar services. Absent the existence of other legitimate transportation considerations, a difference in rates for the same services cannot be upheld. The Commission has frequently ruled it unreasonable under Section 1 to charge more for transit at one point than at another point when the transportation service is the same.

Henderson Commercial Club v. *I. C. R. R.*, 36 I. C. C. 20.

Flory Milling Co. v. *C. N. E. Railway*, 93 I. C. C. 129.

Similarly, it is equally well established that charging different rates under substantially similar circumstances results in a violation of Sections 2 and 3 (1) of the Commerce Act. Section 2 provides that a carrier shall not by any special rate or other device collect or receive from any person greater or less compensation than is received from other persons for a like service. In *Interstate Commerce Commission* v. *B. & O. R. Co.*, 225 U. S. 326, 56 L. Ed. 1107, the Supreme Court upheld the ruling of the Interstate Commerce Commission to the effect that differences with respect to competition between coal in-

tended for railway consumption and other coal and with respect to the manner of delivery do not provide dissimilar circumstances and conditions so as to justify the giving of a lower rate for the transportation of railway fuel coal than is given to shippers of other coal between the same points. In holding that a difference in charges under these circumstances would be a violation of Sections 2 and 3 of the Commerce Act despite the fact that fuel coal shipped was not in competition with commercial coal, the Court said (225 U. S. l. c. 341):

> "The issue of principle between the Commission and the companies is very accurately presented, and we come to consider whether there are differences in the traffic of fuel coal which distinguish it from traffic in commercial coal, and which, as contended by the companies, make the traffic dissimilar in circumstances and conditions, or whether the opposite is true, as decided by the Commission.
>
> "The circumstances and conditions which may so far be considered as distinguishing traffics so far as to take from different transportation charges the vice of preference have been described by this court. In *Wight v. United States*, 167 U. S. 512, 518, 42 L. Ed. 258, 259, 17 Sup. Ct. Rep. 822, it is said: 'It was the purpose of the section (2) to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.' These words are given more precision by the declaration 'that the phrase, "under substantially similar circumstances and conditions," as found in Section 2, refers to matter of carriage, and does not include competition.' And this was repeated in *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S. 161, 166, 42 L. Ed. 421, 423, 18 Sup. Ct. Rep. 45. The facts in both cases give significance to the rulings. In the first case the charges to the shippers were the same, but one was given extra facilities; in the second case the extraneous effect of competition was excluded as an element in the application of the section. There is also example in *In-*

terstate Commerce Commission v. *Delaware, L. & W. R. Co.*, 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. Rep. 392. It was there held that a carrier could not look beyond goods tendered to it for transportation in carload lots 'to the ownership of the shipment' as the basis for determining the application of its established rates. Do the circumstances and conditions in this case give a greater power of discrimination and justify the lower charge to railroad-fuel coal? It is admitted that the fact that a railroad is the shipper or consumer is not a circumstance or condition that affects the carriage, nor can the different uses to which the coal may be put; and it would seem necessarily that any other extraneous condition or circumstance could have no greater potency. Once depart from the clear directness of what relates to the carriage only and we may let in considerations which may become a cover for preferences. May a carrier look beyond the service it is called upon to render to the attitude and interest of the shippers before, or their attitude and interest after, transportation? It must be kept in mind that it is not the relation of one railroad to another with which we have any concern, but the relation of a railroad to its patrons, who are entitled to equality of charges."

The Court then discussed the differences urged by the carriers and held that they did not justify a different charge because "such features do not affect the carriage, quality or alter the essential service which is to get an article from one place to another."

When Section 3 (1) was amended in 1935 it was changed so as to expressly forbid any undue or unreasonable preferences to any "transit point." The Commission has in many cases held that where two transit points are upon the same route between a given origin and a given destination, a difference in charges for the through transportation as between the two transit points is unduly prejudicial. *Commercial Club of Omaha* v. *C., R. I. & P. Ry.*, 6 I. C. C. 647; *Hock* v. *Penna. R. Co.*, 10 I. C. C. 675; *St. Louis Hay & Grain*

Co. v. *M. & O. R. Co.*, 11 I. C. C. 90; *Sondheimer* v. *I. C. R. Co.*, 17 I. C. C. 60; *Transportation of Wool, Hides and Pelts* 23 I. C. C. 151; *Railroad Com. of La.* v. *St. L. S. W. Ry. Co.*, 23 I. C. C. 31, 48; *Paducah Board of Trade* v. *C., B. & Q. R. R. Co.*, 37 I. C. C. 743, 751, 758; *Henderson Commercial Club* v. *I. C. R. R. Co.*, 36 I. C. C. 20, 28; *Kornfalfa Feed Milling Co.* v. *A., T. & S. F. Ry.*, 38 I. C. C. 307; *Fabrication-in-transit Charges*, 29 I. C. C. 70; *Dallas Chamber of Commerce* v. *A., T. & S. F. Ry.*, 40 I. C. C. 619, 646; *Nashville Flour Transit Rules*, 41 I. C. C. 483; *Eldred Milling Co.* v. *C., N. O. R. R. Co.*, 42 I. C. C. 215, 220; *Buffalo Grain Cases*, 46 I. C. C. 570, 583; *Chicago Bridge & Iron Co.* v. *Erie R. R.*, 46 I. C. C. 641; *Business Men's League of Helena* v. *Ry. Co.*, 48 I. C. C. 490; *Strasburg Steam Flouring Mills* v. *S. Ry. Co.*, 53 I. C. C. 52, 58 I. C. C. 337, 339; *Mercantile Lumber Co.* v. *I. C. R. R.*, 53 I. C. C. 663; *Indianapolis Board of Trade* v. *B. & O. R. R. Co.*, 64 I. C. C. 416; *South Dakota R. R. Co.* v. *Director General*, 73 I. C. C. 347; *Fort Worth Freight Bureau* v. *B. S. L. & W. Ry. Co.*, 74 I. C. C. 601; *Buehrle Co.* v. *B. & O. R. R.*, 87 I. C. C. 303; *Compression, Concentration, and Storage of Cotton*, 91 I. C. C. 472; *Flory Milling Co.* v. *C. N. E. Ry.*, 93 I. C. C. 120; *Rodney Milling Co.* v. *M. P. R. Co.*, 93 I. C. C. 200; *Lange & Crist Box Lumber Co.* v. *B. & O. R. Co.*, 93 I. C. C. 207; *Marshall M. & E. Co.* v. *K. C. S. Ry. Co.*, 101 I. C. C. 270; *Minnesota-Dakota Transit Millers* v. *A. A. R. R. Co.*, 118 I. C. C. 585; *American Grain & Hay Co.* v. *I. C. R. R. Co.*, 129 I. C. C. 225; *Three Forks Portland Cement Co.* v. *C., B. & Q. R. R. Co.*, 129 I. C. C. 107, 118; *Jackson Traffic Bureau* v. *A. & V. Ry. Co.*, 122 I. C. C. 387; *Hobbie Elevator Co.* v. *L. & N. R. R. Co.*, 142 I. C. C. 566; *Sperry Flour Co.* v. *C., R. I. & P. Ry.*, 152 I. C. C. 467; *Birmingham Traffic Bureau* v. *I. C. R. R.*, 155 I. C. C. 676; *Inland Empire Mfrs.' Asso.* v. *A. & S. Ry.*, 165 I. C. C. 53; *Kansas Flour Mills Corp.* v. *A. & S. R. Co.*, 195 I. C. C. 277; 198 I. C. C. 701.

It is unnecessary to discuss each of these cases to show the consistent application of the principle which

they expound, but reference to a few will be made to show the positive views of the Commission when the question has been presented

In *Kansas Flour Mills Corporation* v. *Abilene & S. Ry. Co.*, 195 I. C. C. 277; 198 I. C. C. 701, a voluntary association of corporations and individuals engaged in milling grain at various points in Oklahoma filed a complaint with the Commission alleging that the rates and transit rules maintained in connection with grain shipments from points on the defendant's lines in Oklahoma to destinations in Texas were unreasonable, unjustly discriminatory and unduly prejudicial. The Pillsbury Flour Mills Company and the Kansas Flour Mills Corporation intervened and asked the same relief. Pillsbury asked such relief with respect to traffic accorded transit at Enid, Oklahoma, and the Kansas Flour Mills asked such relief as to grain accorded transit at Alva and Cherokee, Oklahoma, and Anthony, Kansas. It appeared that shipments of grain originating at points in Oklahoma, milled in transit at Enid and shipped to Abilene, Texas, were charged a rate of 35 cents. On the other hand, if the transit was taken at points on the Gulf Santa Fe Railway Company in Texas, although the shipments moved on the same route and through the same points, the rate thereon was 31 cents instead of 35 cents. There were a number of other applications of the same rates and in fact it appeared that shipments transited at points in Oklahoma and Anthony, Kansas, paid the higher rate while, if the same shipments were transited on points on the Gulf Line in Texas moving over the same route, they paid a lesser total rate. The evidence showed that the points were in competition and that the complainants, transit operators at the Oklahoma and Kansas points, were in competition with transit operators at the other points enjoying the lower rate.

Division Two of the Commission held that this difference in rates in favor of Texas transit points as against

Oklahoma transit points constituted "a clear case of undue prejudice and preference." It was said (l. c. 284):

> "We further find that the maintenance and application by defendants of their present transit rules and practices on shipments of grain, in carloads, from origins on their lines in Oklahoma and Texas, milled in transit at points on their lines in Oklahoma and at Anthony, Kansas, and forwarded therefrom as grain products to destinations in Texas, which transit rules and practices are less favorable and result in higher through charges on said traffic than are contemporaneously applied by defendants on similar shipments from and to the same origins and destinations when milled in transit at points on the line of defendant Gulf, Colorado and Santa Fe Railway Company in Texas, results and will result in undue prejudice to the complaining millers, and their traffic, at transit points in Oklahoma and at Anthony, and undue preference of competing millers, and their traffic, located at transit points on the line of the Gulf, Colorado and Santa Fe in Texas."

The foregoing ruling of Division Two was upheld and approved by the full Commission in its opinion in 198 I. C. C. 701. It was said (l. c. 704):

> "The facts and contentions of the parties with respect to the allegation of undue prejudice and preference are set forth in the former report and need not be repeated here. The complaint in No. 23901 did not assail the transit rules at Anthony and no finding should have been made as to the lawfulness of those rules under Section 3 of the Act. In all other respects we affirm the findings of division 2, that the maintenance and application by defendants of their present transit rules and practices on shipments of grain, in carloads, from origins on their lines in Oklahoma and Texas, milled in transit at points in Oklahoma on the Santa Fe, and forwarded therefrom as grain products to destinations in Texas, which transit rules and practices are less favorable and result in higher through charges on that traffic than are contemporaneously applied by defendants on similar shipments from and to the same origins and destinations when

milled in transit at points in Texas on the line of the defendant Gulf results and will result in undue prejudice to the complaining millers and their traffic, at transit points on the Santa Fe in Oklahoma, and undue preference of competing millers and their traffic, located at points in Texas on the line of the Gulf."

And in *Royal Milling Co.* v. *G. N. Ry.*, 47 I. C. C. 263, 265, it was said:

"In previous opinions the Commission has considered the importance of granting transit upon grain at all points on a through route at which transit may be used, so as to prevent undue preference and advantage to terminal and rate-breaking points. *In re Transportation of Wool, Hides and Pelts*, 23 I. C. C. 151; *Southern Illinois Millers Asso.* v. *L. & N. R. R. Co.*, 23 I. C. C. 672; *Missouri River-Illinois Wheat and Flour Rates*, 27 I. C. C. 286; *Fabrication in Transit Charges*, 29 I. C. C. 70; *Henderson Commercial Club* v. *I. C. R. R. Co.*, 36 I. C. C. 20."

The Commission has in the past clearly seen that the smallest fractions affect the trade in grain and that equality is not achieved when there is any difference in rates whatever. In *Strasburg Steam Flouring Mills* v. *S. Ry.*, 53 I. C. C. 52, the Commission said:

"We have frequently held that a charge not exceeding 0.5 of a cent is reasonable for this additional service. But we have also condemned the discrimination which results from the collection of such a charge at one milling point while no charge is made at other milling points on the through route, including rate-breaking points where the rates to or from the latter points are essentially parts of the through rates. *Southern Illinois Millers Asso.* v. *L. & N. R. R. Co.*, 23 I. C. C. 672, 677."

And in another case: *Minnesota-Dakota Millers* v. *A. A. R. Co.*, 118 I. C. C. 585, 596, it was said:

"The grain and milling industry is highly competitive. A difference of a few cents per 100 pounds,

or even less, between competitors is frequently more than can be absorbed by the competitors suffering the disadvantage. A separate transit charge of 1.5 or 2.5 cents places the interior millers at a disadvantage in their competition with millers at Minneapolis, Duluth, and points farther east who are free from such a charge. This disadvantage is only partially offset by the advantage which the interior millers enjoy when shipping down the lakes. The disadvantage is traceable directly to the different policies of the lines serving western trunk-line territory in respect of transit. There appears no sound reason in law or economics for this difference in policy. It places the interior miller at a disadvantage which he should not be compelled to bear."

Nor has it made any difference that the transit point being considered was a market, or proportional rate point. Thus in *American Grain & Hay Co.* v. *I. C. R. R.*, 129 I. C. C. 225, proportional rates existed from Memphis to destinations in Arkansas and Texas, but the defendants having established overhead rates from Illinois points through St. Louis and Cairo on a basis less than the Memphis combinations, the Commission found that the failure to permit transit at Memphis on the overhead rates, as was done at St. Louis and Cairo, was prejudicial. Nothing in the report showed any thought then on the part of the Commission that transit at a proportional rate point was of any different character than transit at an interior point.

The decision of the Commission in *Tex-O-Kan Flour Mills Company et al.* v. *Atchison, Topeka & Santa Fe Railway Company*, decided on June 30, 1941, shows that the Commission, since its decisions in the instant case, has reached the opposite result and has held that undue prejudice and preference exists in a similar case. In that case the Tex-O-Kan Flour Mills Company, and other Texas milling companies, claimed that the failure of the defendant railroads to allow storage in transit at their places of business in Dallas, Fort Worth, Beaumont, Amarillo

and other Texas points on wheat flour shipped from points in Oklahoma, Missouri, Kansas, Nebraska and other states when reforwarded from the Texas points, while allowing such transit at Marshall, Texas, and at points in Louisiana, Arkansas, Oklahoma and other states, resulted in undue prejudice to complainants and their localities in violation of Section 3 of the Act.

The situations which were involved were practically the same as those in the instant case. In the Tex-O-Kan case, for example, a carload shipment of flour from Kansas City to Galveston, Texas, routed over the lines of the Atchison, Topeka & Santa Fe to Purcell, Oklahoma, and thence by way of the Gulf, Colorado and Santa Fe to Galveston, could be stopped and stored in transit at intermediate points, such as Oklahoma City and Ardmore, Oklahoma, and reshipped therefrom, for a through rate of 42c, but if the flour were stored at and reshipped from Ft. Worth, Texas, an intermediate point on the same route, the shipment was under the provisions of the defendants' tariffs, subject to a combination rate of 36c to Ft. Worth and 28c beyond, making a total of 64c. Similarly, a carload of flour shipped from Enid, Oklahoma, to LeCompte, Louisiana, could be stopped in transit at El Reno, Oklahoma, at Shreveport or Alexandria, Louisiana, or at Marshall, Texas, and reforwarded to destination on a through rate of 39c in each instance. In the event transit was taken at Fort Worth or Dallas, Texas, intermediate points on the same route, the applicable rate was a combination rate of 61c, composed of 28c to and 33c from Fort Worth and Dallas. It appeared that by reason of these higher combination rates, shippers at Dallas were unable to compete on the same basis as other competitive mills and that Dallas and Fort Worth shippers could not generally obtain flour from mills outside of Texas for blending with their products because of the higher combination rates.

The Commission pointed out that in its decisions in the Grain cases, a maximum of three stops in transit

without a charge in addition to the line haul rates, was authorized and held that under the facts presented, shippers at Fort Worth, Dallas and other points were being subjected to undue prejudice and their competitors at the other points to undue preference in violation of Section 3.

The Commission said:

> "We find that the failure of defendants to maintain on traffic under consideration, storage-in-transit arrangements at complainants' localities served by them in the State of Texas, while maintaining such arrangements for like traffic at localities in other States and at Marshall, Texas, on their lines, is not unreasonable, but results and will result in undue prejudice to complainants and complainants' localities in Texas and undue preference of the localities and shippers at those localities in the other States and at Marshall.
>
> "An order requiring removal of the undue prejudice and preference will be entered."

Another recent decision in which the same result was reached is that of the Commission in Investigation and Suspension Docket No. 4872 Grain, Oklahoma to Memphis, Tennessee, decided on August 5, 1941. In that case as the result of proceedings and adjustments in the Grain cases, various routes and rates were provided covering the movement of grain from Okahoma points to Memphis, Tennessee. However, no provision was made for a route from certain Okahoma points to Memphis and Arkansas points by way of Arkansas City, Kansas, thence over the Missouri-Pacific to destinations. As a result of subsequent proceedings, this route was provided. Subsequently, however, an attempt was made to cancel this route because the Secretary of the Commission had advised that the arrangements theretofore made did not satisfy the Act as the situations were not protected by the Fourth Section Order which had been procured. A cancellation was proposed which would subject shipments from Oklahoma origins transited at Arkansas City and there de-

livered to the Missouri-Pacific to combination rates .02c higher than the joint through rate of 34c. The effect of the proposal was to make the rate on shipments transited at Arkansas City 36c, while the 34c rate was applicable to a number of points on direct routes. The Court held that the proposed schedules would unduly prejudice Arkansas City and unduly prefer other points and that therefore they should be cancelled. It was said:

> "We conclude that under the proposed schedules Arkansas City on the Santa Fe would be unduly prejudiced, and surrounding points such as Anthony, Harper, Wellington, Winfield, Independence, and Coffeyville would be unduly preferred; and Arkansas City and Winfield on the Frisco would be unduly prejudiced and Fredonia and Cherryvale would be unduly preferred."

Section 15 of the Interstate Commerce Act (pp. 31-32) provides that where the hearing is by the Commission on its own initiative, the Commission may determine and prescribe just and reasonable charges and practices where it finds that the charges or practices in existence are or will be unjust or unreasonable or unjustly discriminatory or unduly preferential and prejudicial. Where the Commission acted pursuant to the power given under Section 15, as it did in the Grain Cases, its rulings and orders must satisfy the requirements of Section 1 (5), 2 and 3 (1) of the Interstate Commerce Act or its orders are void. *Baltimore & Ohio R. R.* v. *United States,* 298 U. S. 349, 80 L. Ed. 1209; *Brimstone R. R. Co.* v. *United States,* 276 U. S. 104, 72 L. Ed. 487.

Nor can it be urged that the Hoch-Smith Resolution gave the Commission greater power so that it was not bound by the requirements of Sections 1 (5), 2 and 3 (1) of the Commerce Act. In *Ann Arbor R. R. Co.* v. *United States,* 281 U. S. 658, 74 L. Ed. 1098, the Supreme Court ruled that the Hoch-Smith Resolution did not change the law in any respect, nor did it give the Commission any justification for not applying the statutory limitations existing theretofore.

In view of the foregoing, it cannot be denied that the orders of the Commission cannot be sustained unless the Commission has found some substantial difference in conditions which would constitute a sound and lawful basis for a difference in treatment of primary and interior markets.

This brings us to a consideration of the reasons relied upon by the Commission to justify its orders.

II.

The Grounds upon Which the Commission Denied the Primary Markets the Right to Transit on the Same Basis as Interior Points Are Insufficient as a Matter of Law to Constitute a Lawful Basis or Justification for the Violations of the Act Inherent in and Resulting from the Decisions and Orders of the Commission.

(a) The differences in conditions found by the Commission, which it relied upon as a basis for a difference in treatment of primary and interior markets, are legally insufficient to support the Commission's orders.

The question here is whether the differences in conditions relied upon by the Commission in its opinions to support the difference in treatment of interior and rate-break markets are proper transportation considerations sufficient in law to justify higher charges when transit is taken at primary markets than when taken at competing interior points. As has been pointed out in the statement of facts, there are numerous situations where all interior transit points along the various routes transit on the same basis and there is no discrimination. However, in the numerous instances complained of, the interior points have been permitted to transit on lower through rates, which lower rates have not been made available to shippers at primary markets. As heretofore pointed out, these exceptional cases have resulted in a serious and substantial injury to the primary markets and to shippers at such markets, for the simple reason that they cannot compete with interior points enjoying rates that are substantially lower.

1. The only differences found by the Commission are the direct result of natural conditions existing at interior and rate-break markets.

In the first and second grain cases, the Commission was dealing with a situation prevailing at the primary markets which the Commission found to be undesirable and to effect a discrimination against some shippers at such markets in favor of other shippers at the same markets.

Nowhere in those opinions did the Commission find or discuss any differences in conditions or find any other facts to support or justify a difference in treatment of primary and interior points. In its first decisions, the Commission did not permit interior points on rate-break routes to transit on the lower through rates. In fact, as heretofore shown, the Commission held that it was necessary to deny interior points on rate-break routes the right to transit on the lower through rates in order not to discriminate against rate-break markets. The Commission said (173 I. C. C. 516, R. 240):

> "The restriction is laid on the intermediate points other than the market, as well as upon the market, in order not to discriminate against the market in favor of the other intermediate points. The reason for the restriction as to all intermediate points would be apparent if the combination rate over the higher route were published as an overhead rate, for then, manifestly, transit would be accorded only at the higher rate applicable over that route.
>
> "The fact that the market may draw grain from a wider territory than the other intermediate points hardly affords justification for a difference in treatment."

It is very significant that in the foregoing the Commission expressly held that the fact that the market drew grain from a wider territory and consequently possessed various advantages did not afford a justification for dif-

ference in treatment. This position by the Commission was reaffirmed after the decision of the Supreme Court in *Atchison, Topeka & Santa Fe Railway* v. *U. S.*, 284 U. S. 248. At this time the Commission stated (205 I. C. C. l. c. 342, R. 321):

> "In the original report (page 645) an exception to the rule for the exclusive application of the rate-break combinations was made in respect of shipments through a rate-break market to meet the carrier competition of a lower-rated route, provided the shipments were not stopped at the rate-break market or other intermediate point on the equalized route, the rate-break combination to apply on shipments stopped in transit on that route. That finding, as more fully explained in the supplemental report (page 515) is adhered to."

Not until further consideration of the record in 215 I. C. C. 83 was this position changed. Here the Commission said (215 I. C. C. l. c. 89, R. 536):

> "It has been suggested that the main purpose of the findings in respect of the rate-break combinations (to require the exclusive application of the proportional rates on shipments from the rate-break markets to destinations to which published) would not be violated by so broadening the exception to meet carrier competition as to permit of transit at interior transit points on the route through a given rate-break market, in order to meet the lower rate over the competitive route between the same points, regardless of whether the interior transit points on the equalized route are also transit points on the cheaper route, provided that transit is not also accorded at the rate-break market on the equalized route. The suggestion may be illustrated as follows:"

Here was the first intimation that the prejudicial, discriminatory and unreasonable system which permits all interior transit points to transit on lower rates than terminal markets would be permitted. But the Commission recognized that this position, which was exactly contrary to its earlier view, would have to rest upon a

substantial difference in conditions affecting the interior transit points and terminal markets and said (215 I. C. C. l. c. 90, R. 538):

> "A modification on the basis suggested would have to rest upon a substantial difference in conditions affecting the interior transit points and the rate-break markets."

It will be noted that the Commission said that there must be a *substantial* difference in conditions. It then discussed the mechanics of transit and found that the mechanics of transit in the two instances are exactly the same "except that the outbound shipment under that combination (rate-break combination) is on a definitely published constant factor, instead of on the unpublished and varying difference between the one-factor rates to the transit point and to final destination" (215 I. C. C. l. c. 90, R. 538). In other words, the only difference found was that the outbound factor was constant at rate-break points which means only that the rates break at such points. The Commission then stated that there was a substantial difference "in the effects of the transit operation under the two bases of through charge, due to the inherent difference in the character of the one-factor through rates with transit and the rate-break combinations" (p. 90, R. 538). Accordingly, while the Commission stated that it was essential that there be a substantial difference in conditions, it found no difference in the mechanics of transit but sought to justify its position by a difference in the *effects* of the transit operation. And what were the differences in the effects of the transit operation?

The Commission stated that the rate-break combinations did not include limitations on out-of-line and backhaul movements usually found in the through rates and that such combinations did not require that out-bound movements be held to the lines of the inbound carriers, as is usually required on the through rates (215 I. C. C. 90-92, R. 538-40). It said that the effect of these differ-

ences between the rate-break and non-rate-break points when taken with the larger number of carriers found converging inbound to and radiating outbound from rate-break markets and the location and nature of such markets gave such markets an advantage in that they drew grain from a greater territory and possessed a greater choice of outbound carriers and that because of the nature of such markets as price-registering markets the published constant factor of proportional rates was beneficial to such markets.

The breaking of rates, the limitations as to out-of-line and backhaul movements and the requirement that outbound movements at interior points be held to the lines of the inbound carriers, are all the result of natural conditions prevailing at interior and rate-break markets. The reason Kansas City, Omaha and the other terminal markets are established as rate-break points is because the rates naturally break at such points, because these points are located where they are and because, for the most part, one set of railroad ends and another begins at these points.

The Commission recognized in these proceedings that the breaking of rates at these points is due to such factors and is not artificial. On page 634 of 164 I. C. C., the Commission referred to the breaking of rates as a "natural" one. The matter is clearly stated in the dissenting opinion of Commissioner Aitchison, in 231 I. C. C. l. c. 798, R. 654, as follows:

> "If there are advantages to certain rate-break markets inherent in the rate-break system, it is because the markets are located where they are and because they enjoy the service of many competing railways. These are advantages of their location, which it is not for us to attempt to equalize by condoning other substantial inequality in treatment of those points."

Prior to the decisions of the Commission in these proceedings, the rate-break was well established and it

was recognized and held in a number of cases that the advantages possessed by a rate-break market, including specifically the advantage of a great selection of outbound carriers, are advantages attributable to the location, and railway facilities of the rate-break point which cannot be offset by granting other points more favorable rates and that such advantages, by reason of such rate-breaks, do not constitute undue preferences to such markets, do not unduly prejudice other markets, and do not constitute any basis for allowing more favorable arrangements to other points.

In *Sioux City Terminal Elevator Co.* v. *Chicago, Milwaukee & St. Paul Railway Co.*, 23 I. C. C. 98, Sioux City, Iowa, asked for lower local inbound rates on grain and for the establishment of proportional rates outbound to the principal markets of distribution, including Chicago, Minneapolis and other points. It claimed that such an adjustment was necessary to place it upon substantial equality as a grain market with Omaha, Nebraska, and other competing markets which had the benefit of proportional rates and rate-break. No proportional rates were applicable outbound from Sioux City. Instead its grain was handled under joint through rates with transit for cleaning, milling or otherwise treating the grain. Sioux City was at the time a city with a population of 50,000 people, with elevator capacity capable of handling six million bushels a year. It had a Board of Trade, but no prices were quoted or grain sold thereon. Its functions were the determination of weights and grades in conjunction with the Western Weighing Association. The City claimed that by reason of its general standing financially and commercially, and its location on the Missouri River, it was entitled to the benefit of the rate-break with proportional rates and that it was subject to various disadvantages under the transit system as compared with the proportional basis. It was argued that under the applicable transit system, Sioux City was limited in its outbound move-

ments and its choice of markets. It prayed for the establishment of proportional rates instead of its existing system. The defendants contended that there was a substantial dissimilarity between Sioux City and Omaha and other points; that Sioux City was not a primary grain market and accordingly was entitled to no more in the way of rates and rate structures than many interior points. The defendants insisted that Sioux City's location on the Missouri River did not make it a natural breaking point for rates for the reason that east and west lines never terminated there, having been originally constructed through Sioux City, whereas Omaha and Kansas City were the Western termini of the principal trunk lines and a natural breaking point for rates. The Commission rejected the contentions of Sioux City and held that it had no power to equalize the advantages possessed by other terminal rate-break markets, and that the possession of such rate-break advantages did not constitute undue prejudice to Sioux City. It was said (23 I. C. C. 98, l. c. 108, 109):

> "Complainants admit that the suggested local rates to Soux City and proportions out will, in many instances, aggregate higher through charges on South Dakota grain than the present joint rates with Sioux City transit, thereby emphasizing the impression, which is strongly conveyed throughout the entire record, that what Sioux City wants is not so much the correction of a present substantial rate injustice as to be granted the additional benefits, whatever they may be, incident to proportional rates. Just what these additional advantages are, or why proportional rates, upon the facts of this record, are essential to Sioux City's growth as a market, is not satisfactorily shown. While defendants' witnesses differ on the subject, one testified, and the record in general seems to establish, that Omaha's greatest development as a grain market followed the institution of its proportional rates. It also appears that Omaha was a market of considerable proportions previous to their inception. Whether, therefore, proportional rates made Omaha, or Omaha's increasing demands made

the proportional rates, is perhaps a debatable question. But it seems clear that proportional rates alone do not insure a primary market for grain. On the other hand experience has demonstrated that rates adapt themselves largely to commercial and competitive conditions.

"Whether Sioux City is a primary market for grain, or entitled to be, is a matter of much discussion in this record. Just what constitutes a primary market has not been defined, if, indeed, the term is susceptible of minute description. One of the important essentials seems to be the ability to accumulate grain in large quantities from nearby territory for ready shipment to changing markets at the highest prices. But if we correctly understood this record, Sioux City now, by transfer of transit balances, has the same choice of markets as Omaha on all grain that does not involve a backhaul, including northern Wisconsin on all South Dakota grain originating south of Mitchell, which former state and the southeast are the chief territories of distribution alleged to be closed to Sioux City under the transit system; and we have seen that the southeast is open to Sioux City on South Dakota grain upon the Omaha combination.

"But conceding Sioux City's best development to be dependent upon proportional rates, there remains the question of the justification for an order by this Commission. It is established by this record and others before the Commission that competition has played an all-important part in Omaha and Kansas City's proportional rates. The present question, therefore, reduced to its simple state, is whether the Commission should order in proportional rates at Sioux City, where similar forces have not been asserted. Manifestly it is no part of the Commission's duty or right to equalize markets, except as that result may be incident to the correction of a substantial injustice in rates, in whatever form published at the respective competitive points.

* * * * * * *

"We need not further discuss the question as to whether Sioux City is a primary market for grain, or attempt to define the term. Whatever its status

in that respect, we find that competitive conditions exist at Omaha and Kansas City as determining factors in the establishment and maintenance of proportional rates that do not exist at Sioux City, and that the circumstances and conditions of transportation at the respective markets are substantially dissimilar. We also find that Sioux City, under the present joint rates with transit, is not laboring under such general disadvantage as a grain market, compared with Omaha under proportional rates, as to warrent the prayer of the petition."

In its decision on rehearing in the Sioux City case, 27 I. C. C. 457, the Commission reaffirmed its first opinion, that the rate-break is due to natural conditions arising out of the natural advantages possessed by rate-break markets and the competition of carriers for business. The Commission then pointed out that since the rate-break was due to these conditions it could not equalize or offset such advantages by authorizing the rate-break or other offsetting advantages at other points. However, the Commission said that if it had the power to equalize disadvantages between markets, then it would have the power to grant the relief sought by the complainants, but it said that it had no such authority and power. It was stated (l. c. 463):

If the Commission were considering all of the grain-carrying roads to, from, and through Sioux City, Omaha, and Kansas City, respectively, as one united system, under proper authority to do so, its findings in this case might or might not be different. Or were it proceeding under the right to deal with such matters as of general policy in the exercise of a wide discretion in the equalization of all disadvantages between markets and the like, the same observation would be pertinent. But the Commission has no such authority. It must consider these questions in accordance with the terms of the law which it is charged with administering, which gives full recognition to the separate organization and obligations of the individual carriers within its regulation and to the effect

of substantial differences in circumstances and conditions in the determination of whether the granting or withholding of a given rate or practice is unduly preferential or prejudicial. It therefore always has and necessarily must continue to recognize the effect of *bona fide* competition in the making of rates, and it would not be justified in this case in attempting to depart from that principle and requirement of the act. We are satisfied that there has been and is a substantial dissimilarity in the circumstances and conditions of transportation of grain through Kansas City and Omaha from those through Sioux City, and that the proportional rates from the former gateways were established and have since been maintained by reason thereof."

The Commission in the same report also said (l. c. 461):

> "The proportional rate, therefore, whether it is or is not to the advantage of Kansas City as a grain market, is due to the very competitive conditions to which we have already referred."

And, on page 462:

> "When all is said, the fact is that Sioux City is not as advantageously situated as are Omaha and Kansas City with respect to the grain it seeks to attract."

The same result as in the above case was reached in *Wichita Board of Trade* v. *Abilene & S. Railway Co.*, 29 I. C. C. 376. There the City of Wichita, Kansas, asked that it be made a rate-break market so that it could enjoy the benefits which it claimed resulted from the rate-break at points like Kansas City. Wichita contended that grain dealers at Kansas City had an advantage because under the rate-break in making outbound shipments they had a choice of all established routes without any restriction because the grain reached Kansas City by other lines. The Commission pointed out that interior points like Wichita used transit, which, though less desirable than the breaking of rates, was adequate, and held that the advantages

possessed by Kansas City because it was a rate-break point, could not be offset by granting additional privileges to Wichita or eliminating the rate-break. The Commission said:

> "In its complaint here, Wichita directs attention to the fact that Kansas City is a breaking point for rates upon grain moving from the west to the east and to the south. The grain dealer at Kansas City may ship grain to that point from the west, and may then reship such grain to points east and south thereof at a total transportation expense not greater than the rate on such grain from the interior point of origin to the point of final destination. In making the outbound shipment the Kansas City dealer has his choice of all established routes, without any restriction on account of the fact that the grain may have reached him by way of lines having rails beyond. In the tariff statements, these rates from Kansas City purport to be 'reshipping' rates, and an attempt is made to distinguish them from the so-called 'local' rates from Kansas City. So far as the case in hand is concerned, it is sufficient to say that they serve to carry all the grain forwarded from Kansas City to the east and south. They could carry no more if they were to be called what they really are, the only rates used or intended to be used between Kansas City and the destinations to which they apply.
>
> "At points west of Kansas City, including Wichita, no such reshipping rates are provided; that is to say, rates do not break. Grain dealers shipping to and from such points find themseves forced to pay sums of local rates greater than the through rates from points of origin of the grain to the Missouri River or beyond, unless some other adjustment is made for the reduction of rates in or rates out, or both, so that the sum of the two shall be reduced to the amount of the through rate. The device generally adopted for this purpose is known as transit. Under it grain may be stopped and pass into the possession of the owner for cleaning, grading, mixing, milling, or other commercial process, and then go forward to a new destination at the balance of the through rate from the point from which it was first shipped, with,

at some points, a small charge for the services incidental to the delivery at the transit point.

"Transit is less desirable than the breaking of rates. At rate-breaking points the grain dealer or miller may ship by any line to any market regardless of the route of the inbound movement, while at transit points the commodity must go to the markets reached by the extension of the route of the inbound movement if the reduction of rates to the basis of the through rate is to be made.

* * * * * * *

"The matters of which Wichita complains do not arise out of the failure to grant transportation at reasonable rates over fairly direct through routes. Speaking generally, the railroads have so conformed to the law that the grain dealers and millers of Wichita are able to reach all markets over practicable routes. It is when Wichita contrasts its own condition with the more favorable condition obtaining at Kansas City that complaint arises. Kansas City has the rate-breaking system, and Wichita has not. Kansas City thus has some advantages as a trading point intermediate between the fields and the places where the grain is consumed which Wichita, even with its transit system, is denied. It is descrimination of which Wichita complains and not unreasonableness.

"A finding that the discrimination between Wichita and Kansas City in the respects above noted is undue and an order that it be removed would be in effect an order that the rate-breaking system at Kansas City be abandoned rather than that it be adopted at Wichita. This is true, because every other market between the grain fields and the points of final consumption of the grain would have the same right as Wichita to demand that it also be relieved from this discrimination. If the discrimination were removed by extending the rate-breaking system, the final result would be that grain rates would be made on an arbitrary mileage system without reduction in the rate per ton per mile proportioned to the length of the haul. Such a result may finally be reached in rate making but the industries and commerce of the country are now established upon the present basis,

and great commercial hardship will inevitably attend the abandonment of the present system. The Commission, in the general public interest of all grain producers, grain dealers, and grain consumers, is constrained at this time to decline to undertake such a revolution."

In the foregoing it is significant that the Commission recognized the alleged advantage of rate-break points in a greater selection of outbound carriers, which is the alleged advantage the Commission emphasizes in the instant case. In the foregoing case it was held that this alleged advantage should not be offset by extending the rate-break to interior points like Wichita. If this be true, it is equally true that the Commission has no power to offset this alleged advantage by granting more favorable transit privileges to interior points, especially when it is done as in the instant case upon the express ground that such advantages to interior points are justified by the benefits resulting from the rate-break at terminal markets.

And in *Iowa Railroad Commission* v. *Director General*, 63 I. C. C. 405, the Commission held that Des Moines did not possess the features which made cities like Omaha and Kansas City rate-break terminal markets for grain and accordingly that the Commission had no power to equalize any advantages possessed by such rate-break markets. Here Des Moines, acting in behalf of grain dealers, filed a complaint alleging that the rates applicable to the transportation of grain and grain products at Des Moines were unreasonable and unduly prejudicial. The Boards of Trade and Chambers of Commerce of Kansas City, Omaha, Chicago and Milwaukee intervened, contending that Des Moines was not entitled to the relief sought. The grain dealers at Des Moines claimed that they were at a disadvantage and that Des Moines should be made a rate-breaking point like the Missouri River points. In rejecting this contention the Commission pointed out that the situation at the Missouri River cities was wholly un-

like that of Des Moines because the rates naturally broke at the Missouri River points for they were the termini of strong trunk lines from the West and from the East, and that such Missouri River points were the principal, primary grain markets having enormous grain storage capacities and facilities for handling grain. It was said:

> "The principal object of this proceeding is to have Des Moines made a rate-breaking point on grain traffic, like the Missouri and Mississippi rivers points, Chicago, Peoria, and other grain markets. Complainants' main reliance is upon the relative importance of Des Moines; its newly created grain exchange; the relationship of rates; and certain of our decisions bearing upon the making of rates on classes and commodities between Des Moines and other interior Iowa cities on the one hand, and points east of the Illinois-Indiana state line on the other. They introduced a number of exhibits to show that Des Moines is a commercial, shipping, and focal point of importance, to compare the growth in its population with that of the Missouri and Mississippi rivers cities, and to indicate its relative standing in point of population with other cities in the United States.
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> "Defendants' witnesses further testified that the situation at the Missouri River cities is wholly unlike that existing at Des Moines. Omaha and Kansas City are the termini of strong trunk lines from the west and from the east. In other instances through lines from the points of grain production to Chicago are in competition with lines terminating at the Missouri River. Such conditions do not obtain at Des Moines. The elevator storage capacity at the Missouri River. Such conditions do not obtain at Des that found at Des Moines. There was some testimony concerning primary and terminal grain markets which shows that Omaha was both a primary and terminal market before its proportional rates were established.
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> "Des Moines is an important commercial city, but it is not as advantageously situated as the Mis-

souri River cities with respect to this grain traffic. Those cities are either the termini of the principal carriers or on their main lines in direct route. Des Moines is on the direct lines of few carriers for east-and-west traffic, and in many instances is only reached by out-of-line hauls of such traffic. The conditions which brought about the proportional rates from the Missouri River cities are in nowise comparable with those existing at Des Moines. It must be recognized that carrier competition controls at the Missouri River, and may compel the establishment and maintenance of proportional rates on a basis lower than we would be justified in prescribing from Des Moines, where similar forces are not in strife. We can not equalize markets except to correct a substantial injustice in the rates. It does not appear that Des Moines, under individual and joint rates with transit service, is laboring under such a disadvantage as a grain market, in comparison with the Missouri River cities under proportional rates, as to entitle complainants to the relief sought."

There is one other similar case; *Helena Traffic Bureau* v. *Mo. Pac. R. R. Co.*, 89 I. C. C. 405. There Helena, Arkansas, claimed that it should be placed on a more favorable basis with reference to the rates on grain and grain products in order that it might be placed upon an equality with Memphis. Memphis was a primary grain market and a rate-breaking point. The Commission held that Helena was neither; that it did not do the business and possess the facilities to make it a primary market; and that it did not have the competitive conditions and the facilities for handling grain and its products to make it a rate-break point. The Commission said (l. c. 415):

"Memphis is a primary grain market and a rate-breaking point. Helena is neither. The fundamental issue is whether Helena should also be made a rate-breaking point. A locality has no inherent right to demand that rates break thereon. *Nashville Lumbermen's Club* v. *L. & N. R. R. Co.*, 40 I. C. C. 59, 61. Points on the banks of rivers or lakes in this country which are now accorded a rate-breaking arrangement

have it because they play an important part in some industry as a whole, or because the force of competition has gradually brought about such an adjustment. Memphis is a rate-breaking point because it is connected with the important grain regions of the country by numerous powerful trunk lines. From the west it is served by the Missouri Pacific, Frisco, Illinois Central, and Chicago, Rock Island & Pacific. In addition to the lines named, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis are connections of direct lines serving the grain fields of the West. Any of these lines may bring grain in, and some, for example the Missouri Pacific and the Frisco with its connections, can tap the very grain fields of the West that are served by the Illinois Central, which, together with the Y. & M. V., its affiliated line, constitutes the chief outbound route into the Mississippi Valley.

"There is no similarity between Memphis and Helena from a transportation standpoint. Helena is off the direct route of any important carrier. It is served by branch lines of the Missouri Pacific, and the Y. & M. V., and by the main line of the Missouri & North Arkansas, a line of known financial weakness and traffic sparsity. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 68 I. C. C. 47."

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(l. c. 416):

"Furthermore, by not having facilities for the storage for large quantities of grain Helena lacks one of the elements necessary to entitle it to a rate-breaking adjustment. Its present storage capacity is about 250 carloads, as compared with a total storage capacity at Memphis of upwards of 7,000,000 bushels. Sack grain from other markets is chiefly shipped to Helena; bulk grain only is moved to Memphis. Memphis is the gateway for all kinds of grain and grain products to the South. Helena is only a jobbing point dealing chiefly in mixed livestock feed. As grain is now marketed in this country the existence of primary markets at such important gateways as Omaha, Kansas City, St. Louis, Chicago, and Memphis, with great storage facilities, is almost an economic

necessity, and rates are properly made to meet these existing conditions. But there is no general benefit to follow the establishment of such an adjustment at small jobbing points. Helena is doing no more business than many other jobbing points in the South and Southwest. We have denied requests for the establishment of rate-breaking adjustments at grain-handling points of far more importance than Helena. *Wichita Board of Trade* v. *A. & S. Ry. Co.*, 29 I. C. C. 376; *Iowa Railroad Commissioners* v. *Director General*, 63 I. C. C. 405; *Cairo Board of Trade* v. *A., T. & S. F. Ry. Co.*, 61 I. C. C. 219."

The rules applied in the foregoing cases were also approved in *Grain, Grain Products & Feeds*, 78 I. C. C. 209, and *Kansas City Board of Trade* v. *Alexandria & Western Railway Company*, 102 I. C. C. 285.

We respectfully urge that this court consider the foregoing cases carefully. All of these decisions show beyond any doubt that the alleged advantages which the Commission says justify a different basis for transit at primary markets than at competing interior points are the advantages of the rate-break markets, arising because of their location and railway facilities, which give rise to the rate-break, and that the existence of the rate-break and such advantages, if any, cannnot be made the basis for more favorable treatment of other points not similarly located.

2. The Commission has no power to off-set or equalize such natural advantages as may be possessed by rate-break markets and where it attempts to do so, as in this case, its orders are void and of no effect.

The decisions of the Commission discussed above show not only that the alleged advantages possessed by rate-break points are due to natural conditions, but also that the Commission has no power to equalize or off-set such advantages.

The Courts, as well as the Commission, have held in many cases that natural advantages such as those possessed by rate-break markets, cannot be equalized or offset by allowing a difference in rates or transit privileges to other points. In the leading decision of the Commission in *Ashland Fire Brick Co.* v. *Southern Railway Co.*, 22 I. C. C. 115, it was said (l. c. 121):

> "It seems unnecessary here to state that the power has not been lodged with this tribunal to equalize economic advantages, to put one market in competition with another, or to treat all the railroads as part of one whole."

The Federal courts, in approving this doctrine, have viewed its disregard as invalidating orders of the Commission. In all the following cases it was held that the Commission has no power to equalize natural advantages and if its orders are based upon such an attempt they are void:

Southern Co. v. *Interstate Commerce Commission*, 219 U. S. 433, 55 L. Ed. 283.

Texas & Pacific Ry. Co. v. *U. S.*, 289 U. S. 627, 77 L. Ed. 1410.

United States v. *Illinois Central R. Co.*, 263 U. S. 515, 60 L. Ed. 417.

Anchor Coal Co. v. *U. S.*, 25 F. 2d 462.

In *Southern Pacific Co.* v. *Interstate Commerce Commission, supra*, the court set aside an order of the Commission which declared an increased rate on lumber to be unreasonable. The court held that the Commission's order was void because it was in effect "based upon the belief by the Commission that it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deeming would arise from a change of the rate."

The decision in *Texas & P. R. Co.* v. *United States*, 289 U. S. 627, 77 L. Ed. 1410, is directly in point. There the Galveston Commercial Association complained to the

Interstate Commerce Commission that certain rates were unreasonable and were unduly prejudicial to Galveston. The issue was one of prejudice to Galveston and preference to New Orleans. The court held that rates could not be adjusted with the motive of injuring or aiding a shipper or a particular kind of traffic or a locality and that to do so is to depart from the transportation standard required by the Act; that, while carriers may adjust rates to meet competitive situations between carriers, they cannot adjust rates for the purpose of equalizing facilities or advantages possessed by some localities over those possessed by others. The court said (289 U. S. l. c. 637):

> "While the carriers may, therefore, meet competition by equalizing rates or maintaining differentials both to interior points and to ports, they may not adjust their rates with the motive of injuring or aiding a shipper, a particular kind of traffic, or a locality, for so to do is to depart from the transportation standard, conformity to which the Act contemplates, and substitute others which are prohibited. A tariff published for the purpose of destroying a market or building up one, of diverting traffic from a particular place to the injury of that place, or in aid of some other, is unlawful; and, obviously, what the carrier may not lawfully do the Commission may not compel. *Southern P. Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 444, 55 L. Ed. 283, 287, 31 S. Ct. 288; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46, 56 L. Ed. 83, 87, 32 S. Ct. 22; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445, 59 L. Ed. 1036, 1041, 35 S. Ct. 645; *United States* v. *Illinois C. R. Co.*, 263 U. S. 515, 524, 68 L. Ed. 417, 425, 44 S. Ct. 189; *Atchison, T. & S. F. R. Co.* v. *Interstate Commerce Commission*, (Commerce Ct.) 190 Fed. 591; *Anchor Coal Co.* v. *United States* (D. C.) 25 F. 2d 462, 471."

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(l. c. 639):

> "It seems too plain for argument that the Commission has no authority, upon a showing by a gateway that under an existing tariff too much traffic

passes through another, or too little through it, to readjust the rates and prescribe differentials so as to divert traffic through the complaining gateway. The interests and industries of a gateway are not entitled thus to obtain a benefit reflected from additional traffic which would be diverted by such action of the Commission."

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(l. c. 645):

"The Commission's three reports abound with statements that a differential in favor of the Texas ports will divert traffic running to New Orleans and send it through the Texas ports. Petroleum is one of the commodities as to which complaint was made. There is no transportation difference discoverable in the record between this traffic and that of the other freights affected by the order. But the Commission concluded that New Orleans was not receiving more than its fair share of this business, and that a differential advantage would be of little benefit to the Texas ports by diverting this commodity to them, and therefore refused to make any order respecting the rates on petroleum and its products. It has since, apparently upon similar considerations, refused to prescribe differentials in the rates on black-strap molasses. The actual basis of the decision is, moreover, avowed by the Commission. In the first report it said:

" 'We find that the present relationships of the assailed rates on export, import, and coastwise traffic are unduly prejudicial to Galveston and unduly preferential of New Orleans' (100 Inters. Com. Rep. 122).

"In its second report it stated:

" 'We find that the present parity of rates as between the Texas and Louisiana ports * * * does not result in substantial injury to the Texas ports in respect of petroleum and its products, but does result in substantial injury to and prejudice against the Texas ports in respect of the other commodities considered' * * * (128 Inters. Com. Rep. 388).

"And finally:

" 'Upon further consideration we now find * * * that the present relationships of the assailed carload rates on export, import and coastwise traffic * * * are, and for the future will be, unduly prejudicial to Galveston and the other Texas ports taking the same rates, and unduly preferential of New Orleans' (160 Inters. Com. Rep. 359).

"The action of the Commission cannot be justified upon any theory that it was protecting shippers and consignees, who would naturally desire all possible routes for foreign shipment. On the contrary, the orders prohibited a practice born of competition, and not proved to involve a loss of revenue to the appellants. *The plain purpose of the orders was to build up the Texas ports by diverting export and import traffic to them. As we have shown, Sec. 3 grants no such power.*"

In *United States* v. *Illinois Central R. Co.*, 68 L. Ed. 417, 263 U. S. 515, the court said (263 U. S. l. c. 524):

"It is true that the law does not attempt to equalize opportunities among localities (*Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46, 56 L. Ed. 83, 87, 32 Sup. Ct. Rep. 22); and that the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference (*Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445, 59 L. Ed. 1036, 1041, 35 Sup. Ct. Rep. 645). To bring a difference in rates within the prohibition of Sec. 3, it must be shown that the discrimination practised is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions."

And as the court, in *Anchor Coal Co.* v. *U. S.*, 25 F 2d, said:

"The order here complained of should be enjoined because the Commission exceeded its powers, in that its action was based in part at least, upon in-

dustrial conditions, and was essentially an effort to equalize industrial (natural) conditions or offset economic advantages through adjustment of rates."

This point is covered in the instant case very clearly in the dissenting opinion of Commissioner Atchison, where he said (231 I. C. C. 793, 798, R. 654):

> "It does not justify the disparity to say that the rate-break markets have offsetting advantages which require us to condone or ignore otherwise unreasonable disadvantages those points are subjected to by the adjustment. The intent of the act we administer is that all unjust preferences shall be rooted out, not that they be balanced against each other and permitted to continue. If there are advantages to certain rate-break markets inherent in the rate-break system, it is because the markets are located where they are and because they enjoy the service of many competing railways. These are advantages of their location, which it is not for us to attempt to equalize by condoning other substantial inequality in treatment of those points."

The Commission has held in several cases that more advantageous transit arrangements granted to interior points than to rate-break points are unlawful regardless of the rate-break advantages possessed by such terminal points. One of the more recent decisions supporting this position is *St. Louis Live Stock Exchange* v. *Alton Railroad Company*, 198 I. C. C. 73, decided in 1933. This case involved a controversy between shippers at the principal live stock centers, which included Kansas City, Omaha and other points and the shippers at interior country markets, which included such points as Morris, Kansas; Prospect, Missouri; Emporia, Kansas; Valley and Fremont, Nebraska, and a number of other points. The large terminal public markets contended that the country markets were being granted preferences in transit privileges. They alleged that the railroads, by permitting transit which allowed live stock to be sorted, graded, consolidated and reforwarded at the country market at the bal-

ance of the through rate applicable from origin to ultimate destination, were unduly preferring the country points and that such practices were unduly prejudicial to the complainants. The evidence showed that the country markets were in competition with the complainants and that as a result of the transit practices shippers were subject to strong incentives to desert the principal markets in favor of the country points. The evidence showed that the principal markets enjoyed the greater business; that producers and packers prefer to do business at the public markets; that more modern facilities were available and that there was a greater amount of competitive bidding. The Commission upheld the complaint and ruled that the maintenance by the carriers of less favorable transit arrangements at the large Midwestern markets than those maintained at the country markets resulted in undue prejudice to the principal markets and undue preference in favor of the country markets. It was said (l. c. 96):

> "In our report on further hearing in the livestock investigation we referred to the effect of the application of the stocker and feeder rates to these country-market points adjacent to the Missouri River markets, the sale of the livestock thereat, and its shipment therefrom at the balance of the through or joint rates, whereas the lower basis did not apply to, and the sale-in-transit arrangements did not obtain at, the Missouri River markets. In that report we modified our previous findings to the extent that the carriers should not be required to maintain rates on stockers and feeders on the 85-percent basis to points at which public feed yards for livestock were maintained.
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> "The record establishes that the maintenance by each individual carrier of less favorable transit arrangements at the midwestern markets than those maintained at the country markets results in undue prejudice to the midwestern markets and in undue preference of the country markets. No order for the future will be entered, but defendants will be expected to remove the undue prejudice and preference

found to exist at such country markets as Morris, Prospect, Valley, Fremont, Lincoln, and any others of the same character, whether operated by the carriers themselves or independently. If defendants do not, within a reasonable time, meet this expectation, complainants may, by petition, call the matter to our attention, giving information therein as to the specific points involved, when such further action will be taken as may then seem proper."

It is perfectly obvious that the Kansas City, Omaha and other large live stock markets possessed many advantages not existing at country points. The Commission did not seize upon these advantages to say that they justified a difference in transit practices. Instead, it ruled that despite such advantages it constituted undue discrimination to permit the country markets to transit on a more favorable basis than the large midwestern markets.

In *Strasburg Steam Mills* v. *Southern Railway Co.*, 53 I. C. C. 52, Strasburg, Virginia, filed a complaint alleging that the defendant railways discriminated against it in favor of Lanville and Lynchburg, Virginia, on shipments of wheat and grain products. Under the situation complained of, wheat could be shipped from Chicago, Illinois, over the Baltimore & Ohio through Strasburg to Lynchburg, milled there and the product shipped thence to Raleigh, North Carolina, at a rate of 13.8 cents to Lynchburg and a proportional rate of 15 cents beyond. On similar shipments milled at Strasburg, a rate of 13.8 cents applied to Strasburg and a local rate of 26 cents beyond, thus placing the complainant at a disadvantage of 11 cents per cwt. The defendants claimed that the basing rates from Lynchburg had been reduced and that for that reason it became necessary in order to preserve the business of mills at that point to permit milling in transit on the lower basis; that otherwise these mills could not have continued in operation as against shipments of milled products from mills located in the Central Freight Association territory. The Commission held that the de-

fendants' rates and regulations were unduly prejudicial to the extent that they resulted in higher total charges for Strasburg than those applicable to the transportation of similar shipments milled in transit at Lynchburg or Danville. It was stated (l. c. 56, 57):

> "With respect to the proposal of the defendants to assess a switching charge of $2 in addition to the through rate on shipments milled at Strasburg, it is sufficient to state that the service performed in the movement from Strasburg Junction to Strasburg is precisely the same whether the grain is shipped through Strasburg or is stopped in transit at complainant's mill, and there is therefore no justification for thus discriminating against Strasburg as compared with other points on the direct through route. On behalf of the Baltimore & Ohio it is stated that with a few exceptions a charge of 0.5 of a cent for milling in transit applies at all stations on that line, and contended that such a charge should also apply at Winchester and Charlestown. We have frequently held that a charge not exceeding 0.5 of a cent is reasonable for this additional service. But we have also condemned the discrimination which results from the collection of such a charge at one milling point while no charge is made at other milling points on the through route, including rate-breaking points where the rates to or from the latter points are essentially parts of the through rates. *Southern Illinois Millers Asso.* v. *L. & N. R. R. Co.*, 23 I. C. C. 672, 677.
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> "We find that defendants' rates and regulations applied to the transportation of wheat in carloads from points in and west of central freight association territory and from points in Pennsylvania, Maryland, Virginia, and West Virginia, milled in transit at Charlestown, Winchester, or Strasburg, and forwarded from the milling points as products of wheat to destinations in Carolina territory are, and for the future will be, unduly prejudicial to the extent that they result or may result in higher total charges than those applicable under the rates and regulations contemporaneously applied by defendants to the trans-

portation of similar shipments moving through Charlestown, Winchester and Strasburg and milled in transit at Lynchburg or Danville."

In *Rodney Milling Co.* v. *Missouri Pacific R. Co.*, 93 I. C. C. 200, flour and feed mills at Kansas City, Missouri, filed a complaint alleging that the rates charged on wheat shipped from stations in Kansas to Atchison, Leavenworth, and St. Joseph were unreasonable for the reason that such shipments could be milled in transit at points West of Kansas City and then shipped through Kansas City to Atchison and other destinations on the local rate, while the complainants at Kansas City were forced to pay higher rates than their competitors if transit was taken at Kansas City. The Commission upheld the complaint, saying that:

> "No reason appears why higher rates should be assessed from and to the points here under consideration on shipments milled at Kansas City than on shipments moving over the same route which have been milled at competitive stations west of Kansas City or on shipments milled at Kansas City and thence shipped to points in Missouri, Minnesota, and Iowa.
>
> "We find that the rates herein found applicable were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the contemporaneous through rates from the points named to the same ultimate destinations, upon which milling in transit is allowed at points in Kansas west of Kansas City, Missouri-Kansas; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest."

And in *American Grain & Hay Co.* v. *Illinois Central R. Co.*, 129 I. C. C. 225, it was held that the failure of

the defendants to maintain the same through rates on grain via Memphis with transit as they maintained via East St. Louis from points in Iowa, Illinois, Minnesota and Wisconsin to destinations in Arkansas resulted in undue prejudice to Memphis and undue preference to their competitors at East St. Louis.

In *Santa Rosa Traffic Association* v. *Southern Pacific Co., supra,* the Commission ruled that the fact that one point is on a branch-line and another on a main-line does not constitute such dissimilarity as to justify lower terminal rates to one which are denied to the other.

The fact that a market is advantageously located with reference to the lines of many carriers does not constitute a dissimilarity justifying a difference in treatment. *Ridge Coal Mining Co.* v. *Mo. Pac. R. Co.*, 62 I. C. C. 259; *Dering Mines Co.* v. *Director General*, 62 I. C. C. 265; *Bell & Zoller Coal Co.* v. *Baltimore & O. S. W. R. Co.*, 74 I. C. C. 433, reversing *Fairmount & Cleveland Coal Co.* v. *Baltimore & Ohio R. Co.*, 62 I. C. C. 269, order sustained, *United States* v. *New River Co.*, 265 U. S. 533, 68 L. Ed. 1165, 44 S. Ct. Rep. 610, reversing *New River Co.* v. *Chesapeake & Ohio Ry. Co.*, 293 Fed. 460; *Winding Gulf Colliery Co.* v. *Chesapeake & O. Ry Co.*, 115 I. C. C. 113; *Ragland Coal Co.* v. *Virginian Ry. Co.*, 115 I. C. C. 147.

3. Even if any advantage exists because the primary markets have the rate-break or because of any other factors, this is no lawful basis for creating a discriminatory prejudicial adjustment for the purpose of offsetting the alleged advantages, as it is the function and purpose of Sections 1 (5), 2 and 3 (1) of the Interstate Commerce Act to uproot all discriminations rather than to create discrimination for the purpose of offsetting advantages of other points.

The fundamental purpose of the Interstate Commerce Act is "to compel the carrier as a public agent to give equal treatment to all," "to cut up by the roots every form

of discrimination, favoritism and inequality" and to "place all shippers upon equal terms." *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 392; *Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467, 478; *U. S.* v. *Union Stock Yards & Transit Co. of Chicago*, 226 U. S. 286.

This court in its recent decision in *Mitchell* v. *U. S.*, 85 L. Ed. Adv. 811, said (l. c. 815):

> "We have repeatedly said that it is apparent from the legislative history of the Act that not only was the evil of discrimination the principal thing aimed at, but that there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. *Shreveport Case* (*Houston, E. & W. T. R. Co.* v. *United States*), 234 U. S. 342, 356, 58 L. Ed. 1341, 1350, 34 S. Ct. 833; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 749, 750, 75 L. Ed. 672, 679, 680, 51 S. Ct. 297; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 512, 513, 75 L. Ed. 1227, 1237, 1238, 51 S. Ct. 505."

It is well established that one discrimination or prejudicial adjustment cannot be justified by the alleged existence of another. Watkins, Shippers & Carriers, 4th Ed., Par. 144, page 283; *Railroad Commission of Louisiana* v. *Arkansas Terminal Ry. Co.*, 41 I. C. C. 83; *Freight Bureau* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 7 I. C. C. 180; *Colorado Coal Traffic Assn.* v. *Colo. & S. Ry. Co.*, 18 I. C. C. 572; *Sioux City Commercial Club* v. *C. & N. W. Ry. Co.*, 22 I. C. C. 110; *Sheboygan Assn.* v. *Chicago & N. W. Ry. Co.*, 55 I. C. C. 140; *St. Louis Chamber of Commerce* v. *Director General*, 59 I. C. C. 586; *Mo. River-Nebraska Cases*, 40 I. C. C. 201.

In *Railroad Commission of Louisiana* v. *Arkansas Terminal Railway Co.*, *supra*, there was a disparity between rates from Shreveport to destinations in Texas, as compared with rates from Texas points to the same destinations

for like distances. Commodity rates from Texas points to Shreveport were materially higher than rates from such points to other Texas points for like distances. In an attempt to justify these differences in rates, the interveners and defendants contended that the inbound rates to Shreveport from producing territories were more favorable than the inbound rates to Texas points. It was contended that since Shreveport had an advantage on the inbound rates higher rates against Shreveport on outbound movements could not be unlawful. In rejecting this contention, the Commission held that it could not equalize the commercial advantages of Shreveport and that in addition it could not justify prejudicial outbound rates by advantages possessed as to inbound rates. The Commission said:

> "It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has on her inbound rates.
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> "The proposition that Shreveport has a right to claim the same treatment with respect to rates to and from Texas as is accorded to towns in Texas 25, 50 or 100 miles West of Shreveport, distance and respective transportation conditions considered, regardless of the inbound rates, is so self-evident as to require no discussion. We are dealing here with outbound rates and the reasonableness of such rates does not in anywise depend upon whether the articles taking those rates were produced at the points of shipment or came to those points by wagon, boat, railroad or otherwise.
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> "The uncontradicted evidence is that no transportation conditions exist which justify rates between Shreveport and points in Texas higher than

those contemporaneously applied for like distances within Texas."

In *Freight Bureau* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 7 I. C. C. 180, the Commission held that merely because a city enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects. Here the carriers sought to justify an adjustment prejudicial to Cincinnati by saying that Cincinnati obtained a better freight rate from points of origin than did Louisville and that therefore it ought to pay a higher rate upon those articles when they went forward for distribution. The Commission rejected this contention saying (l. c. 189):

> "The fact that it (Cincinnati) enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in some other respects."

Similarly, in *Colorado Coal Traffic Assn.* v. *Colorado & S. Ry. Co.*, 18 I. C. C. 572, the Commission held that the fact that one point has lower rates than the competing point to some destinations afforded no basis for a difference in treatment with reference to other rates.

The situation in *Sioux City Commercial Club* v. *C. & N. W. Ry. Co.*, 22 I. C. C. 110, was much like that in the instant case. There Minneapolis and St. Paul sought to justify more advantageous class rates over Sioux City because Sioux City enjoyed more liberal back-haul movements. The Commission held that this was no justification for an inequitable rate prejudicial to Sioux City.

The Commission has frequently held that carriers cannot by the allowance of back-hauls, out-of-line hauls, and other more favorable practices treat these as dissimilarities sufficient to justify other discriminations and differences in treatment. *Business Men's Assn. of Minn.* v. *Chicago, St. P. Ry. Co.*, 2 I. C. C. 52; *Rice et al.* v. *Western N. Y. C. Co.*, 4 I. C. C. 131; *Board of Trade of Chicago* v. *Chicago & A. R. Co.*, 4 I. C. C. 158; *Board of Trade of Hampton* v. *Nashville, C. & St. L. Ry. Co.*, 8 I. C. C. 503.

Moreover, subsequent to the opinions in 205 I. C. C. 341, R. 320-1, and 215 I. C. C. 91, R. 538-40, at the hearing on the formal complaints, the differences relied upon by the Commission were shown to be non-existent. At such hearings much undisputed evidence was introduced to show that a great amount of out-of-line service was allowed at interior transit points and that contrary to the general recitations in the Commission's earlier reports, interior points operate generally upon rates decidedly more circuitous than rate-break markets (See record in No. 27628 pp. 462, 1529, 1530, 1621, 1622).

It is significant that in view of the evidence heard on the formal complaints the Commission did not in any of its subsequent decisions mention or rely upon said alleged differences in limitations as to out-of-line movements and back-hauls referred to in its earlier reports.

The foregoing shows that if it be true that rate-break markets have the advantages found by the Commission, such advantages cannot be offset by allowing more favorable transit privileges to interior points. The opinions of the Commission show that the mechanics of transit are the same in both cases; that the cost of the transportation and the transit service is the same at interior points, as at primary markets, and that if there is any difference it lies simply in the fact that the rate-break markets possess natural advantages of location and facilities which are not the basis for imposing higher transit charges.

III.

The Grounds Upon Which the Commission Refused to Grant Complainants Any Relief From the Discrimination Against Them and Against the Primary Markets, and Denied Their Complaints Are Insufficient As a Matter of Law to Constitute a Lawful Basis or Justification for Such Orders.

The preceding point was directed at the reasons relied upon by the Commission as the basis for treating pri-

mary and interior markets differently. This point is directed at the grounds upon which the Commission based its orders wherein it denied relief to appellants. The principal reasons for denying relief to appellants were as follows:

1. That to grant such relief would disturb and disrupt the rate-break structure (229 I. C. C. 15, R. 643).

2. That to grant such relief would reestablish the dual system of rates (231 I. C. C. 795, R. 650).

3. That to grant such relief would be to impose an additional burden upon and reduce the revenue of the carriers (229 I. C. C. 15, R. 643).

4. That the rate-break markets and interior transit points are merely accorded the benefit of their respective forms of transit and that the cancellation of transit at points other than rate-break markets would unduly prejudice such points and unduly prefer other interior transit points on other routes (229 I. C. C. 16, R. 644).

Under the preceding point, we have shown that the Commission did not find any differences in the transit service or the cost thereof. We have further shown that in attempting to justify its denial of relief, the Commission was in fact offsetting the natural advantages possessed by the primary markets. Also in doing so, its action was in direct conflict with all its previous decisions and with the decisions of the courts.

In this situation, and although the Commission has held that "a modification on the basis suggested would have to rest upon a *substantial* difference in conditions affecting the interior transit points and the rate-break markets," 215 I. C. C. 90 (R. 538), it sought to justify its orders by resort to the meaningless fiction of a difference in the forms of transit (See point 4 above). How could there be any difference in the forms of transit when, as the Commission recognized the purpose of the transit arrangement, the physical operations and every incident of

the transaction are exactly the same? 215 I. C. C. 90 (R. 538). The end to be achieved in either instance is the forwarding from the transit point on a basis of rates, so that the through rate from the point of origin of the grain to the destination will be protected. Exactly the same records are kept for the transit operation at a rate-break market as at a competing interior point, the same evidence of prior shipment is required, the same character of billing is involved and every other detail is exactly the same. There is in fact no difference whatever to be discerned between transit at a rate-break market and transit at an interior point, except only this that the proportional rate applied from a rate-break market which is in truth and in fact the balance of a through rate is a fixed and constant amount. This obviously shows no difference in the forms of transit and, as heretofore pointed out, the Commission was in fact relying upon the alleged advantages of primary markets over the interior points, rather than upon any difference in the form or nature of the transit service and, as we have also seen, any advantages which the primary markets may possess constitute no lawful basis for the imposition of higher charges against shippers at primary markets for the same transit service.

The other three reasons for denying relief are equally insufficient to support the Commission's orders for the following reasons:

(a) The Commission's position that the relief sought should be denied because to allow it would disturb and disrupt the rate structure, reestablish the dual system and impose an additional burden upon the carriers is insufficient in law and in fact.

Appellants contend that the action of the Commission in denying them relief on the grounds that permitting the primary markets to transit on a limited number of through rates would disrupt the rate structure and affect the revenue of the carriers was erroneous and legally unjustifiable for the following reasons:

1. It is no basis for denying relief from a substantial discrimination that to grant such relief will disturb the rate structure or affect the revenue of the carriers.

The Commission's refusal to order a discontinuance of the preference on the ground that to do so would disturb the rate structure is obviously legally insufficient. It is no legal basis for denying such relief that to grant it would disturb or disrupt the rate structure, and an order based in whole or in part upon such grounds is erroneous. The Supreme Court, in *United States* v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 294 U. S. 499, 79 L. Ed. 1023, held that the Commission may not annul a reduction of rates because if put into effect it would disrupt the existing rate structure. In that case the Commisssion found as follows:

> " 'We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by Sec. 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> " 'We find that the proposed rates would be unreasonable and in violation of Sec. 1 (5) (which denounces unreasonable charges) and 15a (2) of the act (which has been summarized above).' "

Note that the above findings are almost the same as in this case. See 229 I. C. C. 16, R. 644.

The Supreme Court held that these findings were insufficient and said, 294 U. S. l. c. 507:

> "The statement in the second of these paragraphs that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and

then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated. *Cf. Florida* v. *United States, supra* (282 U. S. 213, 75 L. Ed. 303, 51 S. Ct. 119); *Southern P. Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 449, 55 L. Ed. 283, 31 S. Ct. 298. There is no suggestion in the report that the rates have been so reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are excessive. On the other hand, they do not pass the minima beyond which charges are too low. A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself. *Texas & P. R. Co.* v. *United States*, 289 U. S. 627, 636, 77 L. Ed. 1410, 1421, 53 S. Ct. 768; *United States* v. *Illinois C. R. Co.*, 283 U. S. 515, 522, 68 L. Ed. 417, 424, 44 S. Ct. 189. We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute. Interstate Commerce Act, Sec. 15a, U. S. C., Title 49, Sec. 15. Those tendencies excluded, 'a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best.' *United States* v. *Illinois C. R. Co., supra.*

"Subject to these tests, the finding by the Commission that the new rates are unreasonable is seen to be nothing more than a deduction from the paragraph immediately preceding, wherein we learn that the schedule, if put into effect, will disrupt the rate structure in Indiana and related areas and disturb groupings and differentials maintained for many years. This brings us to the question whether such disruption and disturbance may be deemed a sufficient reason for taking from a carrier the privilege of reaching out for a larger share of the business of transportation and initiating its own schedule to help it in the struggle. For an answer to that question, other facts, exhibited with greater particularity in other parts of the report, must be brought forward and considered. Those affecting the Indiana groups may conveniently be stated first; those affecting groups in Illinois afterwards.

"Every change of a rate schedule, either voluntary or involuntary, is a disruption *pro tanto* of the

rate structure theretofore prevailing. Plainly such a disruption without more is no sufficient reason for prohibiting a change. The Indiana carriers by long continued cooperation have maintained a fixed schedule of differentials between mines in the southern group (Princeton and Booneville) and mines farther to the north. There is not a fact stated in the report to indicate that it will be unjust or impracticable to apply the new Milwaukee rates to the other lines in Indiana after increasing them by the differentials hitherto prevailing. There is not a fact to indicate that the rates so reduced will be less than compensatory or that capacity for service to the public will be impaired or put in jeopardy. 'The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage.' *Florida* v. *United States, supra* (282 U. S. 214, 75 L. Ed. 304, 51 S. Ct. 119). As applied to the Indiana groups, the broad conclusions of the report, when related to the supporting findings, amount to this and nothing more, that the new schedule for Milwaukee is likely to be followed by new schedules maintaining the same ratio for other lines in Indiana. Even if the outcome for those lines is a diminution of the profits (the return being none the less compensatory), this without more does not make it wrongful for Milwaukee to restore the long standing parity between Brazil and Springfield. At the very least the findings should inform us, if only approximately, of the extent of the expected loss; they should make it clear whether the impairment of revenues will be trivial or substantial, for only thus can the impairment be related to capacity for service. *Cf. Florida* v. *United States*, 292 U. S. 1, 9, 78 L. Ed. 1077, 1084, 54 S. Ct. 603. Nothing of the kind is shown."

* * * * * * *

(l. c. 509):

"We are warned by the new report, however, that a change once permitted has a tendency to spread. The acceptance of the new schedule for Milwaukee will lead, it is said, to requests for proportionate reductions by other lines in Indiana, and this in turn

to new reductions by lines in Illinois and even in Kentucky, the outcome being characterized in the argument of counsel, though not in the report, as a rate war between the roads. The threat of such a war may be a reason for rejecting a new schedule if the rate relation previously existing is a fair one, or even, we may assume, if the Commission is without power to avert the reprisals and thereby nullify the threat. Neither of these conditions is satisfied in this case. The Commission does not hold that the existing rate relation is intrinsically sound and fair. On the contrary, it expressly concedes that the rate situation as between the Illinois and Indiana groups may be in need of correction, though it expresses the belief that this should not be done in any piecemeal fashion. The point of the decision is not that present rates are sound, but that they must be maintained, even if unsound, for fear of a rate war which might spread beyond control. The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds.

* * * * * * *

"In brief a schedule of lowered tariffs has been canceled though the facts that control the validity of the reduction have yet to be determined. This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come.

"We would not be understood as saying that there do not lurk in this report phrases or sentences suggestive of a different meaning. One gains at places the impression that the Commission looked upon the proposed reduction as something more than a disruptive tendency; that if found unfairness in the old relation of parity between Brazil and Springfield; and that the new schedule in its judgment would confirm Milwaukee in the enjoyment of an undue proportion of the traffic. The difficulty is that it has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional

findings of an administrative agency. *Beaumont, S. L. & W. R. Co.* v. *United States,* 282 U. S. 74, 86, 75 L. Ed. 221, 229, 51 S. Ct. 1; *Florida* v. *United States,* 282 U. S. 194, 215, 75 L. Ed. 291, 304, 51 S. Ct. 119. We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

The foregoing holding is directly applicable to the instant case. Here, as in the foregoing case, the basis for the orders is the desire to protect a rate structure.

The Commission, as well as the courts, has frequently held that the fact that a disruption or break-down of a rate structure may result is no basis for denying the same privileges to different points or shippers where the transportation service is the same. *Jobbers & Mfg. Bureau* v. *Chesapeake & Ohio Ry. Co.,* 46 I. C. C. 432; *Middlesboro Board of Trade* v. *Louisville & N. R. Co.,* 27 I. C. C. 14; *Kloeber* v. *Northern Pac. Ry. Co.,* 96 I. C. C. 437; *Indianapolis Freight Bureau* v. *Cleveland Ry. Co.,* 26 I. C. C. 53; *Empire Steel & Iron Co.* v. *Director General,* 62 I. C. C. 157.

In *Jobbers & Manufacturers Bureau* v. *Cheasapeake & Ohio Railway Co., supra,* it was held that the fact that the establishment of certain rates may result in a far-reaching disruption of a highly important and complicated rate structure does not justify approval of rates which are discriminatory. The Commission said (l. c. 436):

"Defendants urge that the principle involved is far more important than the rates from Huntington and that a favorable response to complainant's contentions would result in a far-reaching disruption of a highly important and complicated rate structure. While in the view we take of the case the apprehended consequences are to be doubted, it is also to be said, as we have more than once held, that in any event such consequences would not justify an approval of rates which contravene the act."

Similarly the Commission has held in many cases that the maintenance of the revenue of carriers is not a factor to be taken into consideration for the purpose of justifying different rates to different shippers where the transportation service and the cost thereof is the same or substantially so. *Board of Trade of Troy* v. *Ala. Midland Ry. Co.*, 6 I. C. C. 1; *Beatrice Creamery Co.* v. *Ill. Central R. Co.*, 15 I. C. C. 109; *Hilton Lumber Co.* v. *Wilmington & W. R. Co.*, 9 I. C. C. 17.

2. If the Commission grants the relief sought it has the power to keep the situation under control so that the unrestricted dual system is not re-established and the rate structure not unduly affected.

Prior to July 1, 1935, many through rates had been established less than the combinations. This resulted in many variable transit balances. Although the markets functioned under this system, it was generally conceded that the existence of an unlimited number of variable transit balances was not as satisfactory as when the bulk of rates is on the combination. This system, referred to for the first time in the Grain Case as the "dual system," came in for criticism only because so many through rates had been established on the basis of less than market combinations. In the Grain Case, the Commission attempted to remedy the situation by embarking upon the experiment of making the combinations the exclusive basis for transit at the designated terminal points. This was the first time such a practice was ever tried. The Commission said that it was necessary in order to eliminate discrimination existing between different dealers in the same market. This position is obviously unsound for the reason that the privilege of using transit balances was available to any and all dealers in a given market indiscriminately.

It is not our purpose to defend or seek to reestablish the unrestricted dual system as it existed at the time of the first Grain Case. If this court concludes that the

orders of the Commission should be set aside, it is not for the Court to establish rates and practices. That is a matter for the Commission and it will be presumed that the Commission will not attempt to remedy present unlawful practices by creating any other unlawful or objectionable situation. It is our purpose, however, to point out that the flat assertion of the Commission that it should not grant the Complainants relief because to do so would reestablish the dual system is a conclusion unsupported by facts, and unsound. That the Commission's conclusion or assumption is not justified by the facts is apparent from a consideration of the Commission's reports.

In the first place it must be admitted, and the Commission recognized, that a minor number of balances is not objectionable. In the original Grain Case at the time of the establishment of the combinations as the exclusive basis for transit at rate-break markets, it was recognized that exceptions and adjustments would have to be made to meet demonstrated difficulties and to overcome prejudicial features (164 I. C. C. l. c. 698, R. 106; 223 I. C. C. l. c. 245, R. 625).

The Commission has allowed departures from the rate-break in numerous instances. Exceptions from the application of the absolute rate-break were allowed as to Southeastern territory, including Cairo and Memphis and St. Louis, all of which are rate-break markets (205 I. C. C. 392, R. 390-1). In 215 I. C. C. 83 (l. c. 95, R. 543), the Commission approved the cancellation of proportional rates between Chicago, Peoria and St. Louis, and from Memphis to points in Arkansas, for the purpose of permitting these markets to transit on through rates less than the combinations. In *Wheat Products From Twin Cities to Chicago*, 218 I. C. C. 27, the Commission permitted transit at the rate-break market of Minneapolis under the proportional rate from Duluth to Chicago and thereby equalized Minneapolis with the interior transit points through that market. In *Southwestern Millers League*, decided

July 12, 1938, the Commission had under consideration rates from the west into central freight territory and approved proportional rates from the rate-break markets of Milwaukee, Chicago, Peoria and St. Louis without fixing any limitation of transit. In *Transit Grain in St. Louis District*, 223 I. C. C. 556, the Commission refused to withdraw transit in the St. Louis District because it would "be unjustly prejudicial to that district and unduly preferential of interior Illinois and Missouri points where transit would still be available."

The significance of these exceptions is that they show that the Commission can and does control each situation, so that the unrestricted dual system or any of the so-called objectionable features of such system are not permitted to exist. Since the Commission controls each rate and every factor thereof, it is apparent that the whole situation is completely within the control of the Commission and any objectionable developments can be curbed or eliminated.

The same situation was presented in *United States* v. *Chicago, M., St. P. & R. R. Co.*, 294 U. S. 499, 79 L. Ed. 1023, where the Supreme Court said, 294 U. S. 1. c. 509:

> "The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds."

When the Complainants appealed to the Commission for relief, the Commission at first sustained their position and found that its previous orders should be modified so as to authorize restricted departures from the exclusive application of proportional rates at rate-break points. In that report, the Commission found that the granting of the relief sought would not change a single rate in effect, but would merely permit the terminal markets to transit on an equality with interior transit operators on the same rates over the same routes (223 I. C. C. 239, R. 618). It further found that the granting of this relief would not

adversely affect the rate structure (223 I. C. C. 239, 244, R. 618, 624). Although the Commission subsequently denied a mandatory order, the above findings clearly indicate that the situation is one which would be within the control of the Commission and that it has full power to keep the changes within proper bounds.

IV.

The Opinion of the Commissioner Who Conducted the Grain Rate Investigation and of Other Commissioners That the Present Rate and Transit Adjustment Is Unduly Prejudical to the Primary Markets and Should Be Corrected Are Entitled to Great Weight.

The proceeding out of which the matter here in controversy arose was one of tremendous proportions. As the Commission said in the original report, "it embraces threescore and more of major issues, affecting every part of a vast territorial domain, each of which would ordinarily present a case of more than average importance and be treated in a separate report in the customary way." (164 I. C. C. 619, 697, R. 105).

The Commission recognized that in so comprehensive an investigation it would be impossible to arrive at conclusions in all respects which would be final, but that it would be necessary to modify its decisions and orders as experience demonstrated the need therefor. It said that "it would be impossible to take any comprehensive action without adversely affecting certain of the conflicting interests upon the record. Nothing but experience can demonstrate what the effect will be regarding certain of these issues." It therefore requested all parties "to make careful note of the effect upon their interests, with the view to bringing to our attention from time to time, after reasonable trial, those situations which may require further consideration" (164 I. C. C. 698, R. 106).

The grain and milling interests in the primary markets soon found, as appeared evident from the begin-

ning, that they could not compete with grain and milling interests at interior points when they had to pay the higher rate-break combinations in order to transit, while their interior competitors in many important instances could transit on lower through rates. They therefore went back to the Commission, in response to the invitation extended in the manner above indicated, and requested that they be permitted to transit on the same basis as the grain and milling interests at interior points.

The entire *Grain Rate Investigation* in which hearings, which extended over a number of years, were held throughout the territory from Chicago to the Pacific Coast was in charge of former Commissioner Meyer. In cooperation with two Examiners, he conducted this investigation, recommended the findings and conclusions based on the evidence and generally assumed the responsibility for the outcome.

It goes without saying, therefore, that Commissioner Meyer had an intimate knowledge of all of the questions involved in this proceeding and was better able to judge the effect of any action than other members of the Commission who had not been so closely identified with it, and it is safe to say that they deferred to his judgment in large part in arriving at the conclusions that were reached.

In view of these facts, the opinion of Commissioner Meyer upon any question involved in the proceeding should be entitled to great weight, and the record shows that when the question here involved was presented to the Commission on formal complaint, after its order had been in effect for some time, he immediately realized that a mistake had been made and strongly favored its correction. While the first report rendered in the formal complaint cases does not purport to be that of Commissioner Meyer, but of the Commission, there can be no question but what it bears the impress of his knowledge and experience in the matter (223 I. C. C. 235, R. 613).

As heretofore stated, in that decision the Commission authorized the carriers to establish transit at the primary markets on the lower through or overhead rates on which interior points are permitted to transit, but the carriers failed or refused to voluntarily establish the same. Complainants therefore petitioned the Commission for a mandatory order based on the record as previously made, which a majority of the Commission refused to grant (229 I. C. C. 9) (R. 635).

In a dissenting opinion to that report, Commissioner Meyer quoted the statement in the original report to the effect that the *Grain Case* constituted a very comprehensive investigation in which it was impossible to satisfactorily dispose of all questions, and in which the parties were invited to bring to the Commission's attention any situations requiring further consideration.

He pointed out that in a number of instances modification of the grain rate structure had already been made and, with reference to the request of complainants that they be granted transit on the same basis as interior points, he said:

> "In my opinion the complaining millers and markets have a just grievance against the present lack of transit at the rate-break markets on these rates and I should be glad to assume my share of the responsibility to permit of transit" (*Id.* 17) (R. 644).

In this he was joined by Commissioner Caskie (*id.* 18) (R. 646).

Thereafter complainants again pressed the Commission for relief and in a report rendered upon reargument, in which relief was denied, Commissioner Meyer again dissented, for the reasons stated in his dissent above mentioned (231 I. C. C. 793, 797) (R. 649, 653).

From this report, Commissioner Aitchison, who had not participated in the previous report, also dissented and

was joined by Chairman Caskie in an opinion which so emphatically and pointedly shows that the majority was in error that we shall here set it out in its entirety (*id.* 797-8) (R. 653-4):

"I concur in the separate expression of Commissioner Meyer, which reiterates the substance of his dissent in *Grain Case Modifications*, 229 I. C. C. 9, 17. However, I am of the opinion that *complainants in this proceeding have established that the present adjustment is unduly prejudicial to them.*

"In affirming the previous finding that dealers and millers at the Missouri River markets and Minneapolis are not unduly prejudiced by the denial of transit on the intermarket proportional rates, both the report now adopted and the previous report unduly emphasized the form of rate construction and the character of certain incidents of the transit involved, that is, whether under overhead rates or on inbound and outbound proportionals. The result is that *the substance of the material disparity which exists is subordinated to and is excused by tariff nomenclature.*

"The present adjustment denies transit at these rate-break markets on indirect routes, while the adjustment permits transit, and the privilege is accorded, at adjacent and competing points on either side on the same or more circuitous routes. This appears to be a violation of section 3 (1) of the act, regardless of the method of computing the rates or the form which transit may assume. No justification is suggested for this difference in treatment, other than the mere manner of rate construction and tariff publication, which I cannot bring myself to believe constitute a dissimilarity in transportation circumstances and conditions.

"It does not justify the disparity to say that the rate-break markets have offsetting advantages which require us to condone or ignore otherwise unreasonable disadvantages those points are subjected to by the adjustment. *The intent of the act we administer is that all unjust preferences shall be rooted out, not that they be balanced against each other and per-*

mitted to continue. If there are advantages to certain rate-break markets inherent in the rate-break system, it is because the markets are located where they are and because they enjoy the service of many competing railways. These are advantages of their location, which it is not for us to attempt to equalize by condoning other substantial inequality in treatment of those points.

"The situation should be corrected, even though it may require disturbance of the existing adjustment and of the manner of rate construction and statement. But I am not convinced that such dire results would follow as seem to be anticipated" (Emhasis in the foregoing quotations supplied).

In view of Commissioner Meyer's close connection with this case and his detailed knowledge of the grain rate structure generally and the particular question here involved, as well as the concise and logical expressions of Commissioner Aitchison showing that the primary markets are unduly prejudiced, the opinions of these Commissioners are entitled to the most careful consideration in determining whether the findings and conclusions of the majority are erroneous.

This Court has held that it is proper in determining the basis of an order of the Commission and its validity to consider the dissenting opinions. *Southern Pacific Co. v. U. S.*, 219 U. S. 443, 449; *St. Louis & O'Fallon Ry. Co. v. U. S.*, 279 U. S. 461, 485-6.

V.

The Lower Court Erred in Sustaining the Majority Opinion of the Commission.

The opinion of the lower court shows that it entirely overlooked or ignored the fundamental issue here involved, viz., that there is no difference in the cost of service justifying a difference in rates, and also shows a number of important misconceptions which contributed to the erroneous result reached by the court (R. 737-755).

Lower Court Gave No Consideration to the Fact That There Is No Difference in the Service or the Cost Thereof.

The most significant thing about the court's Opinion is that it makes no reference whatever to our primary contention that, since there is no difference in the cost of service as between transit at the primary markets and interior points, the orders of the Commission are void because they create discrimination and prejudicie in violation of the express provisions of the Act.

This is the fundamental issue in this case and the failure of the court to take it into consideration has led to erroneous conclusions.

The Commission did not find that there is any difference in the transportation service or the cost thereof at primary markets and interior points which alone would justify a difference in rates or transit privileges. On the contrary, the Commission found that the transportation service and the mechanics of transit are the same on the through rates as on the rate-break combinations, and it is obvious therefore that there is no difference in the cost thereof as between primary markets and interior points. This is the controlling fact and calls for a conclusion directly contrary to that reached by the majority of the Commission and sustained by the lower court in utter disregard thereof.

Instead of passing upon this point, the court refers to the reasons given by the Commission for requiring the exclusive use of the rate-break combinations and treats these as findings of ultimate facts, when at best they are merely incidental to the main issue and do not justify correcting a situation which the Commission deems improper in an unlawful manner—by creating discrimination and prejudice against the primary markets expressly prohibited by the Act.

Lower Court Erroneously Assumed That There Are Two Methods of Transit.

Throughout the opinion, the lower court refers to *two methods* of transit (R. 739, 740, 749), which is erro-

neous and misleading. The method of transit is exactly the same, whether it takes place at rate-break or interior points, or on the combinations or the through rates. The only difference is in the form or the construction of the rates, one being the combination of separately established factors and the other being one-factor through rates.

Lower Court Erroneously Assumed That Interior Points Can Transit Only on Through Rates.

The lower court erroneously assumed that interior points could transit only on the through rates, when the fact is that they can transit on the combinations as well as the through rates, whereas the primary markets are permitted to transit only on the combinations.

That the court thought interior points could transit only on the through rates is indicated by the following:

1. The opinion states (R. 741), referring to the fact that the Commission originally prohibited transit at interior points on lower rates through rate-break points, that the effect of this "had been to deprive those points of any substantial transit privileges * * *." But such points could transit on the rate-break combinations the same as the primary markets, which now are only permitted to transit on the combinations. If such interior points were then deprived of any substantial transit privileges the primary markets are now because they are still on the same basis as the interior points were then.

2. The court says (R. 742) that "the gravamen of the complaint is that the order of the Commission denying the primary markets the privilege of having both the transit privilege under the proportional rate and also under the through rate with transit is unreasonable, unfair, unjust and discriminatory."

Here the court again overlooked the fact that interior points have the privilege of transit under both classes of rates and that our contention is that, since they can transit on both, it is unreasonable, unfair, unjust and discriminatory because the primary markets are not permitted to do so. *This is the gravamen of the complaint.*

3. On Record page 749 it is stated that the Commission justified the discrimination depicted by the illustration there given by pointing out that "it was necessary to avoid unfairness to interior points such as Independence to make available to them one or the other of the two methods of transit."

By this the court means transit on the combinations of rates or on the through rates. But as we have seen, interior points can transit on both, and if they were deprived of transit on the through rates, they could still transit on the combinations to which transit at the primary markets is now confined, and would therefore be on the same basis. However, we are not complaining because interior points can transit on both, but because primary markets cannot.

4. In the same paragraph (R. 749) the court said that interior points "must be permitted to transit on through rates or none at all." This is not correct. They transit on the combinations the same as the primary markets, the only difference being in the inbound and outbound factors which they pay. The total rate paid from origin to destination is exactly the same and as the Commission said in the report on further consideration in the Grain Case, interior transit points are interested only in an equality of through charge (205 I. C. C. 387, R. 376).

Opinion Erroneously States That Only Way of Correcting Situation Was by Abolishing Dual System.

The opinion of the lower court states in effect that the Commission found that there was no other way of correcting the situation than by abolishing the dual system. This is not correct. As stated in the opinion (R. 744), the Commission found that overhead rates through the primary markets less than the combinations should be cancelled, but made an exception where necessary to meet carrier competition, thus approving the dual system to that extent. It permitted interior points to continue to transit on the combinations and the lower rated exceptions thereto, and our complaint is based on the fact that the primary markets are not permitted to transit on the

exceptions, but are confined to transit on the combinations.

In other words, it is our contention that if exceptions (lower through rates) to the rate-break combinations are to be permitted and interior points are permitted to transit on the exceptions, then the primary markets are entitled to do likewise. The Commission has not abolished the dual system entirely. It has merely prohibited the primary markets from transiting on the lower through rates, while permitting interior points to do so.

Commission Did Not Find That to Transit on Both Rates Would Give Undue Preference to Primary Markets.

The Opinion of the lower court states that "the Commission found that the availability of both methods of transit to the primary markets resulted in undue and unfair discrimination in favor of the primary markets over intermediate interior points not possessing the proportional rates. * * *" (R. 740).

By this the court undoubtedly means that to permit the primary markets to transit on the combinations as well as the lower rates gives them an undue preference. The same idea is again expressed in the Opinion where it is stated that the Commission's findings in part are that the use of transit balances under through rates and the proportional rates out of the same rate-break markets—

> "(d) give an undue preference to those having the privilege of both transit balance and proportional rates" (R. 744).

The Commission made no such finding as referred to in the two statements just mentioned. What the Commission said at the place from which the last quotation is taken is that it did

> "give an undue preference to the users of transit balances over the users of proportional rates" (R. 311).

A comparison of the alleged finding quoted from the Court's opinion and that quoted from the Commission's report shows that there is a vast difference between the two in meaning and effect.

The Court said in effect that the use of transit balances and proportional rates out of the same rate-break markets gives an undue preference to those markets, while the Commission said in effect that it gives an undue preference to the users of transit balances over the users of proportional rates in the same market.

This is not a finding by the Commission, therefore, that to grant the primary markets the right to transit on both rates gives them a preference over interior points, as the Court evidently understood it. The fact is that the Commission nowhere made such a finding though the majority finally said, when pressed for relief by the primary markets, that the latter were not prejudiced by granting transit on the lower through rates at interior points.

The distinction here made is of great importance in the determination of this case. The lower court erroneously assumed that the Commission had found that there would be undue prejudice, if the primary markets were permitted to transit on both classes of rates, but as we have shown the Commission made no such finding, hence there is nothing from this standpoint to support its conclusion.

When the Commission said that to permit the primary markets to transit on both classes of rates would "give an undue preference to the users of transit balances over the users of proportional rates," it had reference to users or shippers in the same primary market. That is evident from the quotation itself, from paragraph 2 of the syllabus to 164 I. C. C. 619 (R. 27), and to page 645 of that Report where the finding was first made in the following language:

> "We find that the practice of contemporaneously charging both proportional rates and transit balances subjects the shipper under proportional rates to undue prejudice and disadvantage and gives to the shipper under the lower transit balances an undue preference and disadvantage" (R. 53).

That the Commission had reference only to shippers in the same primary market is indicated by the explanation on page 335 of the Report in 205 I. C. C. 301 as follows:

> "The advantage to the user of the transit balance over the user of the proportional rate is evident, and increases in the ratio of the increase in the storage capacity of the respective cash grain dealers at the rate-break markets" (R. 313).

This clearly shows that the finding related to prejudice as between dealers in the same market and as such it is clearly erroneous because all dealers in the same market would have the same opportunity to use transit balances or proportional rates. The fact that one shipper may do more business than another and thus be able to avail himself of more transit balances does not constitute prejudice any more than the fact that a large shipper may be able to ship in carloads at the lower rates on such shipments while another has to pay higher less than carload rates.

But while there is no discrimination and prejudice as between shippers located in the same market because they all have available the same rates, there is discrimination and prejudice against the primary markets when they are confined to transit on the rate-break combinations, while interior points are permitted to transit not only on the combinations, but the lower through rates. That is what the finding of the Commission here referred to inevitably means.

The fact is that it is more advantageous for a shipper to use the lower rates from which transit balances result,

whether he is located at a primary market or at an interior point, and the only way to bring about equality and avoid prejudice is to let all shippers, regardless of their location, transit on the lower through rates as well as the rate-break combinations.

Reasons Given by the Commission Do Not Justify Discrimination.

The opinion of the lower court sets forth the reasons which the Commission gave for abolishing the dual system and says that plaintiffs do not question the existence or sufficiency of evidence to support the factual conclusions (R. 745). That is not entirely correct. We took the position that the finding that there is prejudice within the primary markets is erroneous on the face of it, and that even though transit balances less than the proportional rates out of the primary markets should tend to disrupt the rate structure, depress the price of grain and reduce the revenues of the carriers, that does not justify correction in a manner which results in discrimination and prejudice against the primary markets. However, the lower court did not specifically address itself to this fundamental contention, which should have been regarded as determinative of this phase of the case.

Rate-Break Result of Natural Conditions.

Referring to our contention that the proportional rates result from natural conditions at the primary markets, the lower court concedes that the Commission may not "equalize unequal natural conditions," but says in effect that the proportional rates give to those markets all of the advantages to which they are entitled and that, if they were also permitted to transit on the through rates, that would give them an advantage not flowing from their geographical location, to the material disadvantage of other markets (R. 746-7).

That entirely misses the point we made. We contend that any advantage of proportional rates results from natural conditions and that this may not be offset by

giving interior points more favorable rates and transit privileges, but that is exactly what the court's reasoning leads to and means, and hence constitutes an attempt to "equalize unequal natural conditions." And if to place the primary markets on an equality with other markets results in disadvantage to the other markets, that does not give the latter any just cause of complaint.

Illustrations Not Complete.

The court illustrates the alleged disadvantages that would result to other markets as follows: A miller at Independence could buy grain at Dodge City, pay the local rate inbound and reship to Chicago for 16 cents, and a miller at Kansas City could do the same thing. If the latter were permitted to transit on the through rates, he could reship to Chicago at a transit balance of the through rate from Omaha to Chicago of approximately 10c (9 1/2c), "if, (as the Commission found is almost always the case) the Kansas City miller had moved a like quantity of grain from Omaha to Kansas City upon the proportional rate of 6 1/2 cents" (R. 747). (This assumes substitution of the inbound billing from Omaha for that from Dodge City, which is permissible.)

Instead of following the illustration to a conclusion, the court simply says that "the Kansas City miller would (thus) have a distinct advantage over the Independence miller which the Commission found was not insignificant in practice" (R. 747).

The part of the illustration omitted is that the Independence miller can now reship to Chicago on the transit balance of the through rate from Omaha to Chicago of 6 cents, if he has moved a like quantity of grain from Omaha to Independence on the local rate of 10 cents. (These being the rate factors on Independence, and assuming like substitutions of billing.)

Thus the Independence miller can now do exactly what the Kansas City miller could do if permitted to

transit on the through rates. Regard must be had to the through rate, and if transit were allowed at Kansas City, each would pay exactly the same through rate for the movement from Omaha to Chicago, namely 16 cents. *That would be equality!*

Under present conditions, the Kansas City miller in order to transit has to pay 22 1/2 cents for the movement from Omaha to Chicago, while the Independence miller pays only 16 cents. *That is inequality!*

Furthermore, the illustration as put by the court involves substitution of billing at Kansas City, and by failure to carry it to a conclusion implies that there could be no substitution at Independence, which is not correct. As the Commission said in 223 I. C. C. 235, 242, R. 622, "Selection of billing and the opportunity to substitute one grain for another is inherent in all transit and is not peculiar to rate-break markets."

Lower Court's Finding of Discrimination Against Primary Markets Conclusive.

Referring to our contention that it is unjust, unreasonable, discriminatory and prejudicial that a miller at Kansas City must pay 22 1/2 cents to transit Omaha grain to Chicago, while a miller at Independence shipping over the same line pays only 16 cents, the court says:

> "Undoubtedly, this situation discloses a discrimination at Kansas City. The same discrimination would apply to other primary markets using other similar illustrations" (R. 748).

This is a clear recognition of the correctness and validity of our contentions. But what becomes of it? Here is the language with which the court brushes it aside:

> "Fundamentally, the condition depicted may occur because of the existence of an unusual and unnatural through rate between Omaha and Chicago via Kansas City set up by carriers not having a direct

route between Omaha and Chicago in order that they may compete with the direct lines in the movement of grain between those points. Obviously, Kansas City shippers are not entitled because of their geographical location to ship grain from Omaha to Kansas City and thence to Chicago at the same rate as grain is carried from Omaha on a direct line to Chicago" (R. 748).

The Commission has approved the application of the rates over all of the routes from Omaha, including those via Kansas City and others more circuitous.

The Commission expressly authorized the through rates over routes via Kansas City to meet carrier competition, and provided that all points located thereon could transit on the through rates except Kansas City and other primary markets.

The Commission did not prohibit transit on the through rates at Kansas City because of the circuity of the routes. If it had, it would also have had to prohibit it at all other points on the route via Kansas City.

What are the through rates via Kansas City for, if not to enable the carriers having the indirect routes to compete for the traffic?

If Kansas City is not entitled to transit on the through rate from Omaha to Chicago because it is unusual and unnatural, why are Independence, St. Louis and numerous other points located on the same route entitled to transit on such a rate.

The purpose of the Interstate Commerce Act was "to cut up by the roots every form of discrimination, favoritism and inequality." Why is this form permitted?

The fact is that the through rates and routes via Kansas City are not unusual and unnatural. But if they are, what about the Omaha-St. Louis situation to which reference has heretofore been made, where the routes through Kansas City are almost the most direct, and the routes through Topeka and Lincoln, Davenport and Dubuque are extremely circuitous. Here the court would

have to say that the through rate of 14 cents applying over the latter is "unusual and unnatural," and yet Kansas City would have to pay a rate of 18 1/2 cents to transit on the direct route.

These facts show how erroneous and unsound the reasons are which the court gave for not holding that the discrimination which it said *undoubtedly exists* is unlawful and should be removed.

The discrimination which the court found against Kansas City cannot reasonably nor legally be explained away in that manner. So long as all other points except the primary markets are permitted to transit on the through rates, whether they be unusual and unnatural or not, and on all of the routes, whether they be direct or not, so long are the primary markets entitled to transit on the same rates and routes, and unless they are permitted to do so, unlawful discrimination undoubtedly exists.

Commission Did Not Find That Primary Markets Were Not Injured.

Finally, the lower court says that "the Commission found that the granting of the privilege of transit on through rates to interior intermediate points was of no substantial injury to the primary markets because of the insignificant opportunity of the interior points to, by the transit privilege under through rates, compete with the primary markets operating under proportional rates" (R. 749).

We respectfully, but nevertheless emphatically, wish to state that the Commission made no such finding and the record abundantly shows by the references hereinabove given that this is not correct, but that the primary markets are being seriously injured and damaged by the denial of transit on the lower rates on which grain dealers and millers operate at points on either side of them and all around them.

But it should require no evidence to support our contention in this respect. The situation speaks for itself. In a business so keen that a fraction of a cent determines who can make a sale, as the record shows and as the Commission has frequently stated in its decisions, how can a flour mill in Kansas City compete with another mill at Independence or a dozen other places when the mill in Kansas City has to pay 18 1/2c to ship grain or its products from Omaha to St. Louis for eastern destinations when the mill at Independence and a dozen others pay only 14c for the same service or 22 1/2 cents to Chicago when its competitors pay only 16 cents?

We repeat that this situation constitutes discrimination and prejudice against the primary markets on the face of it. That is so clear and palpable that it does not require the exercise of any expert or administrative action to determine it and under the circumstances the law will presume injury to those arbitrarily charged the higher rates.

The foregoing covers the main points of the opinion. It is evident therefrom that the court reached the wrong conclusion, because it overlooked or ignored the contention that, since there is no difference in the cost of service, a difference in rates and transit privileges is unlawful, and because it evidently did not understand that interior points can transit on the rate-break combinations and the through rates, while primary markets are confined to transit on the former. These points are fundamental in this case and the failure of the court to take them into consideration led it to erroneously sustain the Commission.

Commission Proceeded on Erroneous Legal Principles.

There is just one other point in the opinion of the lower court that we wish to mention. It says that "the Commission's conclusion that the result of the order is not unjust or unreasonably discriminatory is binding upon the court unless the Commission has proceeded upon er-

roneous legal principles or the order is so patently arbitrary that it may not be sustained on any rational theory" (R. 749-50).

In view of what we have said about the lower court's opinion, this statement hardly needs special attention. It is evident from the foregoing that the Commission "proceeded upon erroneous legal principles" when it required different transportation charges as between different points for exactly the same or similar transportation and transit services, a condition which no considerations can make lawful under the Interstate Commerce Act. The Commission has no right under the law to correct a situation which it deems improper in an unlawful manner—in violation of the express provisions of the Act and contrary to all of the criterions of fairness and justice.

These considerations make the Commission's order "so patently arbitrary that it may not be sustained on any rational theory." It has prescribed different transportation charges for the same or comparable services without finding any difference in the transit service or the cost thereof, but on the contrary, while finding that there is no difference in the transportation service; it has for certain incidental and relatively unimportant reasons reached conclusions contrary to those which it and the courts have always heretofore adhered to; and it has created discrimination which is clearly and palpably unjust and forbidden by the Act in a situation where there is no room for administrative or expert judgment.

SUMMARY AND CONCLUSION.

When what is superfluous in connection with this proceeding is put out of view, every substantial controversy which the case presents will be disposed of by determining whether the Commission has the power under the law to require one point on a through route to pay a higher rate in order to transit than another point on the

same or a comparable route. There is not a decision of the Commission or of a court but what has held that such a situation constitutes unjust discrimination and undue prejudice against the transit point paying the higher rates, and that is the rule that must be applied here regardless of the incidental and comparatively ephemeral considerations which induced the Commission to hold the contrary.

Since there is no difference in the service or the cost of the service, there are no conditions that could justify a difference in rates. Different charges for exactly the same or substantially similar transportation service are unlawful and it is our contention therefore that the orders of the Commission requiring the primary markets to pay higher rates in order to transit than interior points are absolutely void, and there can be no circumstances or conditions that can legally justify such action.

The fact that the primary markets have the rate-break, because of their geographical location and their competitive situation with respect to the lines of the railways, is not a lawful basis for a difference in treatment. Even if this were an advantage the Commission, nevertheless, has no authority to create a substantial discrimination to offset it, as it is the function of the Interstate Commerce Act to uproot every such discrimination.

The situation here is similar to that in the *Mitchell Case*, decided by this court April 28, 1941. There Chief Justice Hughes said, in an opinion in which all of the Justices concurred, that the legislative history of the Act indicates that the evil of discrimination was the principal thing aimed at and continued 85 L. Ed. (Adv.) l. c. 817:

> "On the facts here presented, there is no room, * * * for administrative or expert judgment with respect to practical difficulties. It is enough that the discrimination shown was palpably unjust and forbidden by the Act."

This is directly in point here because the discrimination complained of is palpably unjust and forbidden by the Act. In this case there is no room for the application of administrative theories or expert judgment and the practical difficulties which controlled the Commission cannot justify the discrimination clearly resulting from its action and expressly prohibited by the statute. Any other construction of the law would not only destroy the primary markets and leave them without a remedy, but would cause the provisions of the statute to accentuate and multiply the very wrongs which it was enacted to prevent.

We therefore respectfully request that this Honorable Court determine the principles of law in so far as they are applicable and relevant to the disposition of the matters herein complained of in accordance with the foregoing contentions and that judgment be rendered accordingly.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 143.

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON ET AL., APPELLANTS,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

APPELLANTS' REPLY BRIEF.

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November 15, 1941.

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APPELLANTS' REPLY BRIEF.

I.

Immaterial and Irrelevant Matters Are Relied Upon by Appellees.

Appellees emphasize many matters which not only have no bearing on the material questions involved, but which are in fact misleading and tend to confuse the issues.

1. Undue emphasis on Commission's actions in First and Second Grain Cases.

Much of appellees' brief is devoted to a review of what the Commission did in the First and Second Grain Cases. The reasoning of the Commission is gone into in minute detail. Great emphasis is put upon all this detail and historical background, so that to a large degree one is apt to lose sight of the fact that the discrimination complained of arises not from the action of the Commission in the creation and fixing of proportional rates, but rather, from the fact that after the Commission had reached its principal conclusions and prescribed the rates, it then authorized a number of lower through rates and permitted the interior points to transit on such lower rates as well as upon the combinations, while restricting the primary markets to the higher combinations. These exceptions were allowed for the purpose of promoting carrier competition by enabling the carriers, whose lines constituted the so-called "indirect routes" to share in the available business. Appellees gloss over these facts, although the discrimination and prejudice complained of arose therefrom.

Moreover, the appellees, in emphasizing the findings in the *First* and *Second Grain Cases* entirely overlook the fact that subsequent to those decisions the Commission greatly increased and intensified the discrimination against the primary markets and, in order to do so, reversed, in part, its decision in those cases. In both those cases the Commission held that all interior points on routes through the rate-break markets should transit only on the combinations and not upon the lower through rates in order not to unduly discriminate against the rate-break markets. 164 I. C. C. 645 (R. 53), 173 I. C. C. 516 (R. 240). The Commission held that the fact that the primary markets, because of their location, drew grain from a wider territory and had the use of the lines of more carriers, did not afford "justification for a difference in treatment" (R. 240).

Subsequently it refused to follow said findings and rulings and held that all points on routes through the primary markets could transit on the lower through rates except the primary markets (R. 541).

2. The fact that the proportional rates are the average of transit balances does not result in any advantage to the primary markets over interior points.

Throughout the Appellees' brief and the brief of the Texas interveners, the contention is made that proportional rates are the average of transit balances and that therefore the primary markets are not damaged because they pay the average, while the interior points pay transit balances which may be high or low, depending upon the particular case. This contention, or insinuation and implication, that the primary markets pay an average of transit balances which may sometimes be lower and sometimes higher than the balances upon which interior points transit and that therefore the primary markets are not damaged, is erroneous and may mislead the Court.

The method used by the Commission in fixing the rate-break combinations on the primary markets from producing points to Chicago and St. Louis was to first determine reasonable through rates over the direct routes through the markets and then to break them back into inbound local rates and outbound proportional rates, on the basis of average relative distances, resulting in proportional rates, approximately the average transit balances that would have resulted if one-factor through rates with transit, in lieu of the rate-break combinations, had been prescribed. 205 I. C. C. 301, 328 (R. 305).

Reference to this has been made a number of times by the opposition in such a way as to imply that the primary markets are favored thereby.

The method of construction of the proportional rates is not significant even though it be by the averaging process. As has been repeatedly stated in our principal brief, both primary and interior points transit on the

combinations. Both pay the same through rates, except as to the exceptions which are lower. As to all but the exceptions, both primary and interior markets do business on the same basis, the only difference being that at primary markets the balance is known as a "proportional."

The rate-break combinations, of which the proportional rates constitute one factor, are the maximum rates prescribed by the Commission, and the primary markets are now required to transit exclusively on these rates, whereas interior points are permitted to transit, not only on the combinations, but also on lower through rates, where such rates exist.

It is not correct, therefore, to say that the primary market could transit on proportional rates when the transit balances are higher, because the transit balances never are higher. The rate-break combinations and the proportional rates which they are required to pay are always the same as or higher than the through rates and resulting transit balances on which interior points are permitted to transit.

No matter how the various factors of the combinations were determined, the combinations resulting therefrom are higher than the lower through rates upon which interior points may transit and primary markets may not. Appellants are not complaining because of the manner in which the combinations are constructed or that such rates, in themselves, are unreasonable, but complain that it is unreasonable, discriminatory and unduly prejudicial to require the primary markets to transit on such higher combinations (no matter how constructed) while interior points may transit on the same combinations, but also upon lower through rates. It is perfectly absurd to argue or insinuate that such discrimination does not exist because of the manner in which the higher combinations were determined.

It should be understood that the average of transit balances referred to *is not an average of any existing*

balances but an average of the balances which *would* result if there were no proportional rates and transit were allowed only on the basis of the reasonable through rates and reasonable inbound rates which the Commission might determine (205 I. C. C. 328).

When the rate-break markets are allowed the alternative use of balances which are lower than their proportional rates, they will merely be put on the same basis as interior markets, which are now allowed the alternative use of the rate-break combinations and the lower through rates, whereas the primary markets are confined exclusively to the use of the rate-break combinations.

The fallacy of the appellees' argument is also clearly shown by the fact that there can be only one balance from any one transit point under any one through rate, and there can be no "offset" of a high balance against a low balance unless more than one through rate is considered. But more than one situation can not be considered. To determine the existence of unjust discrimination or undue prejudice the question is whether one person pays more for a haul than another, receiving the same service. There is no authority in the act for "offsetting" one situation against another.

The record in the formal complaint cases shows that shippers both at interior points and at primary markets pay the same combinations except in the numerous instances complained of in which shippers at interior markets pay through rates which are always less than the combinations and never more.

The orders of the Commission are not in anywise based on the point which defendants now seek to establish by implication. Since we are here questioning the orders as being improperly founded, as shown by the reasons given by the Commission, the argument and implications of the defendants and interveners could not be material or relevant even if well founded.

Moreover had there been any grounds for contending that discrimination does not exist because of the manner in which the rates were constructed, the Commission would, obviously, have said so. It did not do so.

It is evident that this point, like every other made by the opposition, when properly analyzed, leads to the same conclusion, and that is that the primary markets are suffering discrimination and prejudice for which there is no justification either in the facts found by the Commission, or deducible therefrom.

3. Intricacies of rate structure are unduly emphasized.

Appellees stress the intricacies of the rate structure. They insinuate that such structure and the proportional rates originated with the First Grain Case. This is intrue. The rate-break had existed at the primary markets for years and was the result of competitive factors, the location of such markets and their situation with reference to the lines of the various carriers. The rate structure was the result of a natural development extending over many years.

It is true that such rates are interrelated, but all these matters have no significance here. Appellants do not attack the rate-break combinations, as such, nor the manner in which they originated or are constructed. We contend that these considerations are not relevant, that regardless of the manner in which such rates were constructed there is no justification for allowing interior points to transit on different and lower rates, as well as on the combinations, while the Appellants are held to the higher combinations, particularly in view of the fact that the only excuse or justification for this treatment was to enable some carriers, whose lines constituted the routes through the primary markets to share in the business and to enable interior points on the same routes as the primary markets to transit on lower rates because other interior points on entirely different routes did so.

4. Transit at the primary markets is not as liberal as at interior points.

Throughout their briefs, the Appellees and Texas interveners have insinuated and argued that transit at the interior points is "restricted" while it is much more liberal at primary markets.

Counsel says that "under the rate-break system, the primary markets are accorded full and liberal transit privileges," but they are not as full and as liberal as those accorded the interior points. The latter can transit on through rates which are lower than the rate-break combinations, while the primary markets must transit exclusively on the higher combinations, and interior points are permitted to transit on the inter-market proportional rates, while intermediate primary markets are denied the right to do so, thus making it necessary for them to pay even higher rates than the rate-break combinations on the first primary market.

These are the things the primary markets are complaining about and it does not satisfy the requirements of the law to say that they have full and liberal transit privileges, when competing interior points have fuller and more liberal transit privileges.

The opposition also tries to give the impression that transit on the lower through rates is relatively unimportant. This hardly conforms with statements to the effect that to permit such transit at the primary markets would disrupt the rate structure and that the transit requested would "cover the main body of rates on grain and grain products through the several rate-break markets."

The fact is that, while there are relatively few overhead rates, they are of the greatest importance because a large volume of grain moves on them. All interior points can transit on such rates and it is impossible for the primary markets to compete unless they are permitted to do likewise.

It does not help the Commission's case, therefore, to say in one breath that the instances in which the primary markets are denied transit are relatively unimportant and, in another, that they cover the main body of rates on grain and grain products. Neither one of these contradictory statements is entitled to consideration. Whether the instances are few or cover the main body of rates merely indicates the degree of the inequalities, and complainants are entitled, as a matter of law, to have all inequalities removed.

The fundamental purpose of the Interstate Commerce Act was "to compel the carrier as a public agent to give equal treatment to all;" "to cut up by the roots every form of discrimination, favoritism and inequality"; and to "place all shippers upon equal terms." *New Haven* v. *I. C. C.*, 200 U. S. 361, 392; *L. & N. R. Co.* v. *Mottley*, 219 U. S. 467, 478; *United States* v. *Union Stock Yards*, 226 U. S. 286.

In the *New Haven case*, this Court said:

> "It cannot be challenged that the great purpose of the Act to regulate commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all and to destroy favoritism, * * *"

The Commission's decisions and orders in the present case are in violation of the fundamental principles announced by this Court in the cases referred to, and should therefore be declared null and void.

5. Respecting rate situations set out in appellants' brief.

Appellees say that the rate situations, illustrated by the charts introduced in the trial court (R. 723-728), are misleading and that there is no proof that transit is granted under the rates in question without extra charge at the interior points on the indirect routes shown on these charts.

There is no basis for this criticism. Before this case was submitted to the trial court, counsel for Appellants agreed with counsel for Appellees that it would be desirable to simplify the situation and that certain illustrations should be submitted as representative of the effect of the Commission's orders. In the trial court, counsel for Appellee agreed that the situations illustrated by the charts, truly reflected the effect of the Commission's orders, except in certain unimportant respects (R. 710-711). Accordingly, the present criticism seems most extraordinary under the circumstances.

The testimony before the trial court with respect to these charts was that they illustrate the effect of the Commission's orders on the various parties who brought this suit. It was proper that the parties show how the orders of the Commission affected them.

B. & O. R. R. Co. v. *U. S.*, 68 L. Ed. 667, 264 U. S. 258.

Galveston H. & S. A. Ry. Co. v. *U. S.*, 222 Fed. 175.

Nashville Grain Exchange v. *U. S.*, 191 Fed. 37.

The testimony was that the various maps show representative routes and the location of transit points. All routes were not shown because to do so would make a very complicated map. It was Appellants' desire to simplify the situation as much as possible, so as to avoid unnecessary confusion (R. 712-715).

II.

The Findings of Commission Are Not Conclusive.

The statement is repeatedly made in the brief for the Commission that its findings that the existing transit adjustment does not unjustly discriminate against or unduly prejudice the primary markets are conclusive and may not be questioned by the Court. But this is not correct, as indicated by the discussion in our original brief,

at pages 33 to 39, and the cases there cited, as will further appear from the following discussion.

Counsel also state that whether a preference or advantage is undue or unreasonable is a question of fact to be determined by the Commission. While this is generally true, such findings must be supported by evidence and comply with the Commission's lawful authority under the Act; otherwise there is an abuse of power. *Manufacturers Ry. Co.* v. *U. S.*, 246 U. S. 457, 481.

Reference is made to the recent decision of this Court in *U. S.* v. *Trucking Co.*, 310 U. S. 344, in which the opinion quotes approvingly from *U. S.* v. *L. & N. R. Co.*, 235 U. S. 314, that where a court substituted "its judgment as to the existence of preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so (the court), obviously exerted an authority not conferred upon it by the statute." The implication is that where there is no dispute as to the facts the conclusions to be drawn therefrom are exclusively for the Commission and they they cannot be questioned in any manner.

But the case from which the statement in the opinion is quoted does not so hold as an absolute proposition, for the Court there said that it would have to go further and determine whether the action of the Commission was repugnant to the Constitution, in excess of the powers which that body possesses, or what is equivalent thereto, wholly unsustained by proof.

Our contention here is that the Commission exceeded its powers under the Act by attempting to correct a situation which it deemed improper in an unlawful manner —by violating the express provisions of the statute against discrimination and prejudice, and also, that the Commission's findings and conclusions are wholly unsustained by proof, because the fundamental and controlling facts show that there is no difference in the transportation serv-

ice or the cost thereof, and hence calls for a conclusion directly contrary to that reached by the Commission.

Incidentally, that case (*U. S.* v. *L. & N. R. Co., supra*) involved the question whether Atlanta, Georgia, and other points, were entitled to the same reshipping (transit) privileges on grain as Nashville and other points. The Commission had held that the granting of such privilege to Nashville, while refusing it to Atlanta, was an undue and unreasonable preference to Nashville, in violation of Section 3 of the Act. The then Commerce Court, because the privilege was of long standing and justified by water competition at Nashville, had declared it to be not unlawful and not preferential.

The Court reversed the Commerce Court and sustained the Commission, thus approving its conclusion that there would be discrimination and prejudice against Atlanta unless it had the same reshipping privileges as Nashville, thereby directly sustaining our contentions.

The opinion of the Court in that case says that findings of the Commission are conclusive in case of judicial review, except to the extent pointed out in the *Illinois Central case,* 215 U. S. 452, 54 L. Ed. 280, where the court said:

> "Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz., whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

While the orders in question may be within the scope of the delegated authority under which they purport to have been made, the authority has been exercised unlawfully and in such an unreasonable manner that it may truthfully be said that the shadow, instead of the substance, has determined the exercise of the power and that it is therefore invalid.

If an order rests upon an erroneous rule of law, or is based upon a finding made without evidence, or upon evidence which clearly does not support it, the order must be set aside. *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420.

The doctrine that findings of fact made by the Commission must be accepted in case of judicial review does not relieve the Courts from determining whether statutory powers conferred have been transcended or have been exercised in such an arbitrary way as to amount to the exertion of authority not given. This but expresses the elementary principle that an investiture of a public body with discretion does not imply the right to abuse, but on the contrary carries with it as a necessary incident the command that the limits of a sound discretion be not transcended, which by necessary implication carries with it the existence of judicial power to correct wrongs done by such excess. *Intermountain Rate Cases*, 234 U. S. 476, 58 L. Ed. 1408.

Counsel cite *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, in which the Supreme Court said that whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission, and upon which its decisions are not to be disturbed by the Courts, except upon a showing that they are unsupported by evidence * * * or for some other reason amount to an abuse of power. The Court thus recognized that the findings of the Commission are not conclusive in all instances.

That case is worthy of further consideration here. There the Commission approved a charge in excess of the line-haul rate to industries located on the Manufacturers Railway while the carriers continued to absorb the charges of the Terminal Railway, and held that this was not undue or unjust discrimination.

The Court sustained the Commission, but this was based entirely upon differences in transportation and physical conditions as between the two industrial railways, which was held by the Commission to justify the difference in charges. The Court stated at page 482:

> "In the present case the negative finding of the Commission upon this question of undue discrimination was based upon a consideration of the different conditions of location, ownership and operation as between the Railway and the Terminal."

In the present case there is no difference in transportation conditions justifying a difference in rates and transit privileges, and hence the conclusion must be contrary to that reached in the *Manufacturers Railway Case.*

We have already called attention to the case of *United States* v. *Illinois Central*, 263 U. S. 515, 68 L. Ed. 417, in which the Court sustained the Commission in holding that all lumber mills within a territory from which blanket or group rates generally apply are entitled to the same rates. It was in that case that the Court said that a difference in rates is illegal unless it is shown that it is justified by the cost of the respective services, by their value or by other transportation conditions. Since the Commission had found that there was no difference in these respects, its order requiring a parity of rates was sustained.

That case is on all fours with the present case. Here the Commission denies to the primary markets the right to transit on the same rates as interior points and compels them to pay higher rates, just as some of the lumber

mills in the *Illinois Central Case* were denied the right to ship on the group rates and were required to pay higher rates.

The conclusion in the present case is directly contrary to that in the *Illinois Central Case*. In that case the Commission correctly found that there is discrimination and prejudice for reasons which parallel and are practically the same as the contentions we make in this case, where it reached a directly contrary conclusion. Every fact mentioned and every reason given in that case sustain our contention in the present case and show how illegal and arbitrary the action of the Commission is in the present case.

The case of *Virginian Railway Co.* v. *United States*, 272 U. S. 658, involved the question as to whether all of the mines in a blanketed territory are entitled to the same rates. The Commission had found that the rates were unjustly discriminatory to some points because they had to pay a combination of rates while other mines had through rates on the group basis.

The Supreme Court said that whether a rate is unjustly discriminatory is a question on which the finding of the Commission, supported by substantial evidence, is conclusive, *unless there is some irregularity in the proceeding or some error in the application of rules of law.* It sustained the Commission, because there were no differences in transportation conditions as between the different points in the blanketed territory, and the equality of rates which the Commission had ordered was therefore found justified. Just so should an equality of rates and transit privileges be ordered within the blanketed territory in the present case, and any orders of the Commission which do not require equality are contrary to the principles of law established in the three cases mentioned, and therefore null and void. It is significant that these and other cases which we invoke as sustaining our posi-

tion in the present case are cases in which this Court has sustained the Commission in making exactly the same contentions as we make here. In the present case, the Commission has actually created unjust discrimination and undue prejudice upon facts identical with those in which, in other cases, it has found unjust discrmination and undue prejudice and ordered it removed.

For this Court to grant the relief sought requires the Court to do no more than it did in *Mitchell* v. *United States*, 313 U. S. 80. There too, the Commission contended that its findings of the absence of unjust discrimination and undue prejudice were binding and that the Court would invade the administrative field, if it did not recognize them. This Court held, however, that the discrimination shown was palpably unjust and forbidden by the Interstate Commerce Act and that the Commission's finding that the discrimination was "plainly not unjust or undue" could not be sustained because it was based upon the finding that there was "comparatively little colored traffic" and, therefore, was in violation of the law, as it was the purpose of the Act to eliminate all discrimination. So here, the Commission's finding of the absence of undue prejudice and unjust discrimination is in fact based upon the erroneous ruling that the competitive advantages of rate-break markets justify different charges for the same transit service and upon other erroneous rulings.

III.

The Differences in Conditions Relied Upon by the Commission As a Basis for a Difference in Treatment of Primary and Interior Markets Are Legally Insufficient to Support the Commission's Orders.

At the beginning of their discussion of their point II Appellees correctly state our contentions as follows:

> "Under the proportional rates prescribed by the orders for application from the primary markets,

transit is permitted at all intermediate points on the route except a primary market. Denial of the transit at the intermediate primary market results in a higher rate than that applicable when transit is taken at an intermediate interior point. The transportation and transit service and the cost thereof is the same whether transit is taken at an intermediate interior point or at an intermediate primary market. There is, therefore, an obvious discrimination, in violation of Sections 2 and 3 of the Interstate Commerce Act, and there is no room for the exercise of administrative judgment. The Commission therefore erred as a matter of law in finding that this inequality was not unjustly discriminatory and unduly prejudicial in violation of Sections 2 and 3 of the Act."

We have quoted this because it presents the fundamental issues here involved and because we wish to reply to the argument by which counsel seek to refute the soundness of these contentions in the order in which they appear in their brief.

It is first claimed that the argument is unsound "because it assumes its factual basis, since there was no finding by the Commission that the transportation and transit service and the cost thereof is the same at the respective points."

It is rather surprising that counsel should make such a statement in the face of the obvious and self-evident fact that the transportation and transit service and the cost thereof are exactly the same at interior points as at the primary markets when the traffic moves over the same routes and substantially the same when the points are located on different routes.

But we do not have to rely on obvious facts, because the Commission has confirmed them by its own statements as perforce it had to do if it was going to express itself upon the subject at all.

It said in the original report (164 I. C. C. 634, R. 42) that "the transportation service, recording of freight

bills, keeping of records and all incidents of the entire transaction of shipment to and from the primary market are the same whether the outbound shipment is at the transit balance or the proportional rate," and, of course, there is no difference between transit on a proportional rate at a primary market and at an interior point.

This was recognized and stated by the Commission when it described the mechanics of transit under one-factor through or overhead rates and then said that these are the mechanics of transit also under the rate-break combinations (215 I. C. C. 90, R. 538).

We repeat, therefore, that there is no difference in the transportation and transit service or the cost thereof. No one claimed that there was at the hearings in the *Grain case* and it is not only obvious that there is not, but the Commission has so found.

Since there is no difference in the service or the cost thereof, there is absolutely no justification for a difference in rates. The Commission has no right under the law to require that one point on a route shall pay higher transportation charges in order to transit than another point on the same or a comparable route.

If the soundness of our argument in this respect depends upon the actual factual basis that there is no difference in the transportation and transit service or the cost thereof, as the Commission impliedly concedes, then we submit that it is absolutely sound and that this is determinative of the case.

Counsel for the Commission recognize the force and validity of this contention, but immediately resort to certain incidental matters which, in view of the patent discrimination which exists, are really not substantial and do not justify the discrimination.

They say that our contention in this respect disregards numerous relevant facts and circumstances found by the Commission which formed the basis of its conclusion and decision as follows: (1) That there is a difference

in the rate bases applying when transit is taken at the respective points; (2) that there is a difference in the form of transit; (3) that there is a difference in advantages resulting from the different rate bases and the different forms of transit.

As to the difference in rate bases, it is pointed out that under the rate-break combinations there is a constant outbound factor from the primary markets, known as the proportional rate, while at interior points the outbound shipment is on a transit balance. But what difference does this make when the total transportation charges in each instance would be the same? The rate-break combinations are published as through rates and interior points transit on them as well as the primary markets, the only difference being in the factors. Surely this difference in the construction of the rates does not justify denying the primary markets the right to transit on through rates lower than the combinations when interior points are permitted to do so.

In other words the only difference in the rate bases at primary and interior points, is that, while shippers at both points transit on the same rates (except as to the numerous exceptions complained of as to which shippers at interior points transit on lower rates), shippers at the primary markets pay the inbound rates, plus outbound fixed proportionals, while shippers at interior points pay the same through rates, which, however, consist of the inbound local rate to the transit point, plus a transit balance therefrom, which is in each case the difference between the combination and the inbound local.

The fact that the proportionals are fixed and definite, means simply that the rates break at the primary markets. On the other hand, under transit on the through rates applicable at interior points, since the transit balance is the difference between the inbound rate and the total through rate, it varies because the inbound rates from various points of origin vary. The fact that the out-

bound proportionals are fixed and constant in amount is said to be beneficial to shippers at primary markets in that shippers at such points have a greater selection of carriers. They may choose any of several carriers, anyone of which will carry the shipment at the proportional rate. These differences and the alleged benefits therefrom are relied upon by the Commission as constituting a basis for a difference in treatment and these matters are discussed at length in 215 I. C. C. 91, 92 (R. 539, 540). This portion of the Commission's opinion is copied at length in Appellees' brief. Since its decision reported in 215 I. C. C. 83 (R. 532) the Commission has loosely referred to this general situation as creating a difference in the "forms of transit" but the opinions show that there is actually no such difference. Thus in 215 I. C. C. 90 (R. 538), the Commission described the mechanics of transit on one-factor through rates and then said:

> "The foregoing are the mechanics of transit also under the rate-break combination, except that the outbound shipment under that combination is on a definitely published constant factor, instead of on the unpublished and varying difference between the 1-factor rates to the transit point and to final destination."

And in 164 I. C. C. 634 (R. 42), the Commission said that:

> "The transportation service, recording of freight bills, keeping of records, and all incidents of the entire transaction of shipment to and from the primary market are the same whether the outbound shipment is at the transit balance or the proportional rate."

And in the same report (R. 62) the Commission stated:

> "A stop at a primary market from which there are proportional rates will be viewed as any other transit stop."

It is obvious from the foregoing that when the Appellees talk about "differences in the rate bases" and "in the form of transit" and of "differences in advantages" they refer, as did the Commission, solely to the fact that the rates break at the primary markets and do not break at interior points. Assuming the existence of the alleged advantages referred to by the Commission (as we must under the findings of the Commission), the important question is whether or not they constitute any basis for imposing higher rates at such rate break markets than at interior points. Appellants contend that, as a matter of law, they do not and that the Commission's vew that they do is erroneous for two principal reasons:

1. Rates break at the primary markets because of their advantageous geographical location and their situation with respect to the lines of various railroads, and the Commission has no power or authority to equalize or off-set any such competitive advantages.

2. Even if any advantage exists because the primary markets have the rate break or because of any other factors, this is no lawful basis for creating a discriminatory, prejudicial adjustment for the purpose of off-setting the alleged advantages as it is the function and purpose of Sections 1(5), 2 and 3(1) of the Interstate Commerce Act to uproot all discriminations, rather than to create discrimination for the purpose of off-setting advantages of other points.

Referring to 1 above we have shown in our principal brief (page 57) that the breaking of rates, the limitations as to out-of-line and back-haul movements and the requirement that outbound movements at interior points be held to the lines of inbound carriers, are all the result of natural competitive conditions prevailing at interior and rate break markets. We have discussed and quoted at length from a number of decisions of the Commission recognizing such facts to be true and directly holding that

the Commission has no power or authority to off-set or equalize such advantages in any manner (Brief 58 to 69).

Sioux City Terminal Elevator Co. v. *Chicago, Milwaukee & St. Paul Railway Co.*, 23 I. C. C. 98.

Wichita Board of Trade v. *Abilene & S. Railway Co.*, 29 I. C. C. 376.

Iowa Railroad Commission v. *Director General*, 63 I. C. C. 405.

Helena Traffic Bureau v. *Missouri-Pacific Railroad Company*, 89 I. C. C. 405.

That this is the view of the Commission is shown by the original report in the *Grain Case* (164 I. C. C. 669, R. 77) where, in discussing the rate adjustment at Des Moines, the Commission said:

> "The situation at Des Moines amply demonstrates that conditions at the primary markets create the proportional rates, rather than that the proportional rates create the primary markets."

We have also set forth and discussed various decisions of this court and the lower federal courts holding that the Commission exceeds its power and authority when it seeks to off-set or equalize such natural advantages as may be possessed by rate-break markets (Brief 69 to 79).

Southern Pacific Co. v. *Interstate Commerce Commission*, 219 U. S. 433.

Texas & Pacific Railway Co. v. *U. S.*, 289 U. S. 627..

United States v. *Illinois Central R. Co.*, 263 U. S. 515.

Anchor Coal Co. v. *U. S.*, 25 F. 2d 462.

Having discussed such alleged advantages, Appellees entirely fail to discuss the principal points made by Appellants. They have no answer for the fact that the Commission and the Courts have held many times that the alleged advantages are due entirely to natural competitive factors which cannot be the basis for a difference

in treatment. They ignore the decisions relied upon by Appellants. Under a separate point (number V) they contend that "The orders in question do not disturb natural advantages of rate break markets." Under this point they say:

> "Perhaps it may be conceded that because of their location, the number of railroads serving them, the existence of storage capacities for a hugh volume of grain, and the fact that they are great primary mrakets, it is logical, convenient, workable, and perhaps 'natural' that the rates should break on these markets. The Commission fully recognizes this, since it adopted the rate-break system of rates on grain through these markets after exhaustive investigation and consideration. But it would not seem that the primary markets are entitled to that particular form of rates, as a matter of law. While under the Act they are entitled to reasonable rates that are free from unjust discrimination and undue prejudice, it can hardly be challenged that the form of the rates, whether they shall be combinations or overhead through rates, is a matter within the administrative discretion and judgment of the Commission."

Keeping in mind the fact that the principal point is whether the Commission could lawfully seize upon the alleged advantages as the basis for excusing and justifying higher rates for transit at the primary markets, it will be seen that Appellants evade the point entirely and have never answered it. Obviously, the reason no attempt is made to answer the point, or to explain the decisions relied upon by Appellants, is because the decisions discussed at length in our brief show clearly that the Commission has in fact found no differences in conditions which constitute any lawful basis for the difference in treatment which it prescribed.

Appellees argue that the rate-break markets are not entitled to transit on both rate-break combinations and overhead through rates "especially when the outbound component of the rate break combination—the propor-

tional rate—is fixed by the Commission at a substantially lower level than that previously in effect *in consideration of the elimination of the lower transit balances.*" We have heretofore pointed out that this argument is erroneous and entirely misleading for the reason that the interior markets transit on the same combinations, so constructed as the average of transit balances, but are also permitted to transit on lower through rates. The proportional rates are not the average of existing transit balances. All that shippers at primary markets want is that they be permitted to transit on the lower through rates, as well as upon the combinations because their competitors at interior points do so.

The second point made by Appellants (Brief 79) is that even if any advantage exists because the primary markets have the rate break, or because of any other factors, this is no lawful basis for creating a discriminatory prejudicial adjustment for the purpose of off-setting the alleged advantages as it is the function and purpose of Sections 1(5), 2 and 3(1) of the Interstate Commerce Act to uproot all discriminations, rather than to create discrimination for the purpose of off-setting advantages of other points. Appellants have no answer to this point. The authorities discussed in our principal brief (pages 79 to 83) show that if such advantages as were referred to by the Commission actually exist, they constitute no basis in law for creating the prejudicial discriminatory adjustment authorized by the Commission. The Courts and the Commission have frequently held that one discrimination or prejudicial adjustment cannot be justified by the alleged existence of another and that the fundamental purpose of the Interstate Commerce Act is to cut up by the roots every form of discrimination (See appellants' brief pp. 79-85).

Again we submit that, even if the rate-break were of advantage to the primary markets, that would not justify a difference in transit privileges as between them and interior points, for several additional reasons.

First, there is no relationship between the form of the rates and transit. They are not factors of the same character, and an advantage in one may therefore not be offset by a disadvantage in another.

Second, even if this could lawfully be done otherwise, there would be no way of measuring the advantage of one and the disadvantage of the other so that the attempted equalization could be brought about in that manner.

(a) The Commission's holding that to allow interior points to transit on the lower through rates would unlawfully discriminate against the primary markets and its subsequent reversal of such holding indicates the weakness of the Commission's ruling.

Appellants pointed out that, while the Commission held in the First and Second Grain cases that all interior points on routes through rate-break markets should not be permitted to transit on the lower through rates because this would "discriminate against the market in favor of the other intermediate points" (R. 240), the Commission thereafter reversed this holding and held that interior points on routes passing through the primary rate-break markets should be permitted to transit on the lower through rates and would not be held to the higher rate-break combinations. 215 I. C. C. 93 (R. 541).

Appellees say (point II(a)) that the earlier holding "must be deemed withdrawn in view of the subsequent modification."

They treat the matter as merely a change in administrative view, but can it be disposed of so lightly? The finding that to permit interior points on rate-break routes to transit on a lower basis would discriminate against the primary markets is a finding of law as applicable to certain facts. Of course the courts and the Commission too may make mistakes in the determination of the law and frequently reverse themselves by showing good reason therefor. Was any reason shown here? Not at all. The only justification for ignoring the Commission's orig-

inal holding that undue discrimination would result to primary markets if interior points on the same route were given the lower transit rates was that the Commission recognized that it was discriminatory to place some interior points on a different basis than other interior points, even though they were not on the same route.

The cases cited by the Commission are cases where there was a reversal of administrative rule or factual findings and such cases are not in point.

This circumstance may seem to be of little importance, but its significance is great as it indicates that the alleged differences in conditions which the Commission relied upon to justify its change of view are insubstantial and were resorted to solely for the purpose of enabling the Commission to give some relief to certain interior points against the same type of discrimination which Appellants are now complaining of.

In arriving at that change of view, the Commission relied upon differences between the rate-break and the through rates, and the principal and primary point in this case is whether or not such differences justify the difference in treatment. Those differences have been shown to be unsubstantial and the advantages resulting to the primary markets due entirely to their advantageous geographical location and their competitive situation particularly with respect to the lines of various carriers. We have shown that the courts and the Commission have repeatedly held that these alleged advantages are an insufficient basis for a difference in treatment. Rather than direct themselves to this principal point and to the authorities relied upon, Appellees and Interveners have tried to drag into this case all manner of incidental and inconsequential matters for the purpose of beclouding the real issue.

IV.

The Commission's Conclusion That the Relief Sought Should Be Denied Because to Allow It Would Disturb and Disrupt the Rate Structure, Reestablish the Dual System and Impose an Additional Burden upon the Carriers, Is Insufficient in Law to Support the Commission's Orders.

Appellants have contended (Br. 83-94) that in a case like this where different charges are made for the same transit service (a situation which the courts and the Commission have always held to be unlawful) it is no lawful basis for failing to remove such discrimination that to do so may disturb and disrupt the rate structure or impose an additional burden upon the carriers.

Appellees contend, however (Points III and IV), that these matters were properly considered and they argue that the Commission has the power to consider such matters and that "the term 'transportation conditions' is very broad" and "undoubtedly means much more than operating conditions or conditions relating merely to the physical movement of the traffic." Appellees' contentions are unsound for the reasons discussed below:

1. While the preservation of a rate structure and the revenue of carriers may be proper considerations in some cases, they constitute no lawful excuse or justification for condoning a substantial discrimination whereby shippers at primary markets are charged higher rates for the same transit service as is accorded to their competitors at interior points on the same and other routes.

We do not contend that these matters may not be proper considerations in the disposition of some matters presented to the Commission. We contend, however, that these have no bearing in determining whether unjust discrimination and undue prejudice exist where different charges are made for the same service. We further contend that the opinions of the Commission show beyond any question that it denied relief because of its desire to preserve the rate structure and the revenue of the car-

riers rather than upon a finding of any real or substantial difference in conditions between interior and rate-break markets which could lawfully sustain the difference in treatment which was prescribed.

Appellees cite and quote from a number of decisions. The language quoted from these cases merely shows that in the creation of rate adjustments and the exercise of other administrative powers the Commission exercises a broad discretion in determining what is a proper and beneficial adjustment. This is true, but these considerations do not give the Commission any power to justify a substantial disparity in rates for the same service, forbidden by Sections 2 and 3(1). As stated above we contend that it clearly appears from the Commission's reports that the controlling reason the Commission denied complainants relief was because of its desire to protect a rate structure and the revenue of carriers at the expense of the primary markets.

Section 2 of the Interstate Commerce Act provides that no greater charge for any service shall be made against one person than against "any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic or message under substantially similar circumstances and conditions" and that such charges constitute "unjust discrimination." Section 3(1) forbids any undue or unreasonable preference or advantage to any particular person, company, locality, or transit point, or any particular description of traffic.

Under these sections it is uniformly held that unjust discrimination and undue prejudice result if different charges are made for substantially similar services (See the cases discussed in complainants' brief, pp. 41-53).

The cases cited and discussed in our brief (pp. 85-91) show that, in a case like this, such considerations as the preservation of a rate structure and the revenue of

carriers are insufficient to constitute a lawful basis for denying relief. Upon reading the applicable portions of the Commission's opinions, this Court will readily see the undue emphasis which the Commission placed upon such considerations to the exclusion of the primary issue, viz., whether the differences in conditions are actually sufficient under the law to justify the difference in treatment which was prescribed.

Appellees argue that the Commission found that to grant the relief sought would reestablish the dual system at the primary markets. We have heretofore pointed out in our principal brief (pp. 91-94) that if the Commission is directed to grant the relief sought it has the power to keep the situation under control so that the unrestricted dual system is not reestablished and the rate structure not unduly affected; that it has done so in numerous similar cases and that this Court in *U. S.* v. *C., M., St. P. & P. R. Co.*, 294 U. S. 499, has recognized in a similar case that "the danger is illusory. The whole situation is subject to the power of the Commission which may keep the changes within bounds." 294 U. S. l. c. 509.

Moreover, as the record shows, the Commission ordered the cancellation of all through rates except those made necessary by carrier competition, which had the effect of reducing the transit balances to a minimum, and these would not tend to disrupt the rate structure.

This was the view of a majority of the Commission in the first report in the formal complaint cases, 223 I. C. C. 235, where at page 244 (R. 624) the Commission said that this is not a "general attack on the new structure as such," and that what is urged is "to make these particular changes to meet demonstrated difficulties, which changes *will not adversely affect the structure as a whole*" (Emphasis ours).

However, if it were a fact that transit balances tend to disrupt the rate structure and reestablish the dual system that would not justify an order by the Commis-

sion which clearly results in discrimination and prejudice as between different points, for two primary reasons.

First, because, as stated above, the effect of transit balances upon the rate structure constitutes no legal ground for a difference in transit privileges as between rate-break and interior points. *United States* v. *C., M., St. P. & P. Ry. Co.*, 294 U. S. 499.

Second, because the Commission has no right to correct a situation which it deems to be improper by violations of the Act. If the results of transit balances are detrimental and should be corrected, that must be done in a lawful manner. The Commission has no right to correct a situation which it regards as unlawful by creating another one that is unlawful.

However, the Commission's objection to the dual system was based on the statement that transit balances less than the proportional rates give an undue preference to the users of transit balances over the users of proportional rates, which is clearly erroneous as a matter of law, because all shippers located at the primary markets have the same opportunity to use transit balances or proportional rates. This point is fully discussed at pages 102 to 105 of our original brief.

The same argument as made above applies to the finding emphasized throughout Appellees' brief that transit balances at the primary markets would tend to reduce the revenues of the carriers. That could also be questioned as a matter of fact, but we rely upon the contention that, even if transit balances tend to reduce the revenues of the carriers, that furnishes no justification for prescribing a difference in the transit privileges. The Commission has fixed the rates in this territory, and if to permit all points to transit on the same basis results in inadequate revenues, the remedy lies with the Commission. But this must be done in a lawful manner, and not by creating discrimination and prejudice as be-

tween shippers and localities. This subject is also fully covered in our original brief at pp. 85-91.

Incidentally, we wish to point out that the carriers contended at the hearings in the Grain Case that the denial of transit at the primary markets on the through rates would not result in any increase in their revenues which would offset the reductions in the rates ordered by the Commission, as indicated by the last paragraph in the report in 205 I. C. C., at page 335 (R. 313). However that may be, the primary markets are entitled as a matter of law to transit on the same rates as interior points regardless of what the level of the rates may be.

Moreover, the great emphasis which Appellees put upon these considerations and which they reiterate time and again throughout their brief is wholly unwarranted for the following additional reasons:

2. Granting appellants the relief sought would merely permit them to transit on the same basis as interior points and would give them no advantage over such interior points.

(a) *Substitution of billing not limited to primary markets.*

In the brief for the Commission repeated reference is made to the fact that if Kansas City, for illustration, were permitted to transit on the 16c proportional rate from Omaha to Chicago, the transit balance would be 9 1/2c. The impression is sought to be given that this is a very serious matter, when the fact is that Kansas City pays the full proportional rate from Omaha to Chicago, which applies over routes through that point and on which interior points are permitted to transit in the same manner.

While the outbound balance would be 9 1/2c, the Kansas City operator has paid 6 1/2c for bringing the grain from Omaha, and hence pays the full proportional rate of 16c. There is absolutely no distinction between this and transit now permitted at Independence, Missouri, just outside the switching limits of Kansas City, except that

an operator at Independence would pay the 16c rate in different factors. He would pay 10c to bring the grain from Omaha to Independence and then the balance of 6c to Chicago, making the through rate of 16c.

St. Louis, which is an important grain and milling center, would pay 14c for bringing the grain from Omaha and then a balance of 2c to Chicago, making the through rate of 16c.

There is absolutely no difference in principle as between transit at any of these points, yet an operator at Kansas City, under the present orders of the Commission, would have to pay 22 1/2c for exactly the same transportation and transit service.

But, they say, if an operator at Kansas City is permitted to transit on the same basis as an operator at the other points, he could bring grain from a point in Kansas and ship it to Chicago at a balance of 9 1/2c, thus defeating the proportional rate of 16c. This overlooks the fact that he would pay 6 1/2c to bring the grain from Omaha and that when he paid 9 1/2c for transportation to Chicago, he would pay the full proportional of 16c.

But the important point is that an operator in Independence, or St. Louis, or Dubuque, or Cedar Rapids, or any other interior point, operates in exactly the same way and can do exactly the same thing.

Throughout its various opinions the reports of the Commission show that shippers at interior points are permitted to transit on the lower balances as are illustrated in the various situations to which Appellees refer and that shippers at the primary markets are simply requesting that they be granted the same privilege.

As the Commission stated in the original report in the *Grain case* "preservation of identity of grain is not required" (164 I. C. C. 619, 633). And as Commissioner Meyer pointed out in his concurring opinion in the same report, "the interior transit points are free to select the most favorable transit balances" (p. 701).

In 223 I. C. C. 235, in response to the objections of interior transitors that if the markets are permitted to transit it will give them an advantage over the interior, because of the ability of the markets to select favorable billing and to substitute grain from one section for that of another, the Commission said:

> "Selection of billing and the opportunity to substitute one grain for another is inherent in all transit and is not peculiar to rate-break markets. We do not understand that the interior transitors desire to maintain the identity of each parcel of grain, or of the billing which goes with it, any more than do the shippers at the markets" (p. 242).

Notwithstanding all the discussion in the brief for the Commission, as to the effect of granting transit on the lower through rates at the primary markets, there is absolutely no distinction whatever between what that situation would be and the situation which now exists at any and all interior points.

If there is any difference it is not of kind, but of degree, because there are more inbound and outbound carriers at some of the primary markets than at some of the interior points, but this is a natural condition with which the Commission is not concerned and which it has no right to off-set by a difference in the rates on which transit is permitted.

(b) *Attitude of Intervenors not justified.*

The interveners who now oppose the restoration of transit on overhead rates at the primary markets made no contention in the *Grain case* that the primary markets should be deprived of transit. As stated by the Commission, at 223 I. C. C. 239 (R. ....):

> "* * * for 25 years or more prior to our order in the first *Grain* case, the requested transit had been in effect without complaint from anyone."

The interveners have evidently found that the unfair disadvantage under which the primary markets have been

placed results in advantage to them which they want to keep. We submit that since the establishment of transit at the primary markets would restore a condition that was satisfactory to all concerned prior to the *Grain case*, it should be satisfactory now, and that the contentions of the interveners are not entitled to consideration, because the primary markets are merely asking for equality of treatment.

In the brief of the Texas interveners they complain that if the relief sought is granted, shippers at primary markets may transit on the lower balances. Obviously the Texas interveners wish to hamstring their Kansas City and other competitors, but there is no justification for a difference in treatment.

The record shows that the Texas interveners located at Fort Worth operate on through rates from interstate points to Houston which reflect a balance of 6 1/2 cents from Fort Worth, while they also have rates from the Texas panhandle which are the same to both Fort Worth and Houston so that the transit balance in such cases is zero. By surrendering freight bills covering shipments from Panhandle points they obtain the additional transportation without charge.

.t is evident, therefore, that the interior points have no just grounds of objection. They now operate under the same transit privileges as complainants are seeking. This was recognized by the Commission when it said that most of the interior transit points "now operate on transit under the rates to which the complaining markets are seeking equalization by means of like transit" (R. 621).

The Commission has also specifically found that to grant transit to the primary markets on the through rates will merely place them on an equality with interior points. In the same report the Commission said (R. 618):

> "The relief sought will not change a single rate now in effect, but will merely permit the terminal

markets to transit on an equality with interior transit operators on the same rates over the same routes."

3. The entire argument of appellees erroneously insinuates that the need for preserving the rate structure, the revenue of the carriers and the elimination of the dual system required and justifies such discrimination as now exists against shippers at the primary markets.

Appellees and the Texas interveners erroneously insinuate that the need for preserving the rate structure, the revenue of the carriers and the elimination of the dual system require and justify such discrimination as now exists against shippers at the primary markets. This is most misleading, for while the above considerations induced the Commission to prescribe the rate-break combinations as the exclusive basis of charge at primary markets, nevertheless the discrimination complained of did not result from this action but has resulted because the Commission allowed numerous exceptions, viz., lower through rates upon which it permitted the interior points to transit but not the primary markets. The sole and only reason given for these exceptions was for the purpose of permitting carriers whose roads constituted the so-called "indirect lines" to share in the business (R. 53).

Moreover, as we have repeated many times, the discrimination complained of is in substantial part due to the subsequent action taken by the Commission whereby it refused to be bound by its rulings in the First and Second Grain cases and permitted interior points on rate-break routes to transit on the lower through rates, while the primary markets were held to the higher combinations. The elimination of the dual system, the preservation of the rate structure and the revenue of the carriers did not necessitate and were not the occasion for granting the privilege of transiting on the lower through rates to all the interior points located on the same routes as the primary markets. Such privilege was granted to the interior points solely in order to benefit such interior points

and put them on a better competitive basis with other interior points on the so-called "direct routes" although they were on the same so-called "indirect routes" as the primary markets and although this greatly increased and intensified the discrimination against shippers at primary markets.

V.

The Contention That the Primary Markets Are Not Damaged Is Based on an Attempted Justification of One Discrimination by Another Created by the Commission and Is Unsound and Arbitrary.

In refusing Appellants' request that the Commission place them on the same basis as shippers at interior points, the Commission erroneously stated, in effect, as the reason therefor that the advantage given to interior points on rate-break routes would not damage complainants because they were already under a competitive disadvantage with interior points on other than rate-break routes as a result of the Commission's orders. Appellees contend (Point VII) that the findings of the Commission in this respect were findings of the absence of substantial damage to complainants. The contention is unsound and misleading.

For many years prior to the decision in the Grain case, all points on any of the routes could transit on the same rates or basis. The Commission first deprived all points on rate-break routes of transit while permitting all points on other routes to transit as before. It prohibited transit at interior points on rate-break routes "in order not to discriminate against the (primary) market in favor of the other intermediate points" (173 I. C. C. 516, R. 240).

Later it authorized transit at interior points on rate-break routes because that "would remove discrimination between interior transit points themselves" (215 I. C. C. 92, R. 540) meaning between interior points on rate-

break routes and interior points on other routes. In doing so the Commission said in effect that the transit operator at the rate-break market would not be relatively more affected by transit at interior transit points on rate-break routes than by transit at points on other routes (215 I. C. C. 93, R. 541).

This means that the Commission first created discrimination against the primary markets by denying them the right to transit on the same basis as interior points on other routes and then used that discrimination as a justification for the additional discrimination created by placing interior points on rate-break routes on the same basis as interior points on other routes. The Commission said in effect that since the primary markets have already been damaged and injured, by our previous action, they will not be damaged or injured much more by additional discrimination.

In 229 I. C. C. 14 (R. 642), the Commission said that the granting of transit to interior points on rate-break routes "was at most merely an aggravation of a general competitive situation." The competitive situation referred to is the one it had previously created, when it prohibited transit at the primary markets while permitting it at interior points on other routes. When the Commission justified the additional discrimination created by granting transit to interior points on rate-break routes, it justified its action by the general competitive situation which it had previously created. The Commission sought to justify the new injury by pointing to the previous injury created by it, and thus compounded injury upon injury, by creating new disadvantages to the primary markets in favor of interior points on rate-break routes.

The evidence before the Commission showed that the primary markets were subject to much damage and injury because of the advantage given to interior points on rate-break routes.

The overwhelming undisputed testimony was that slight differences (even a fraction of a cent) decide the markets to which grain will go and the routes over which it will move; that differences in freight rates cannot be absorbed; that grain businesses at primary markets cannot compete with interior points if the substantial differences in transit charges be continued; and that the complainants and other shippers at the primary markets have lost much business and have been put to a great disadvantage by reason of the Commission's orders (See record in case No. 27628, pp. 65, 90, 91, 92, 102, 258, 423, 435, 529, 605, 810, 813, 1003, 1007, 1008, 1056, 1512-1515; see record in case No. 27580, pp. 398-424, 513-532, 616-628 723-731, 860-882, 957-961).

Moreover, even though it be assumed that the additional preference or discrimination be "minor," nevertheless it is unlawful, and the degree of the additional discrimination or preference does not excuse its unlawful character.

This proposition is directly supported by the recent decision of this Court in *Mitchell* v. *U. S.*, 85 L. Ed. (Adv.) 811.

There the Commission held that the discrimination against colored passengers and against plaintiff, in particular, was not undue and unjust, because there was comparatively little colored traffic. In repudiating this contention and in reversing the order of the Commission, this Court, in an opinion by Chief Justice Hughes said:

> "We take it that the chief reason for the Commission's action was the 'comparatively little colored traffic.' But the comparative volume of traffic cannot justify the denial of a funamental right of equality of treatment, a right specifically safeguarded by the provisions of the Interstate Commerce Act. We thought a similar argument with respect to volume

of traffic to be untenable in the application of the Fourteenth Amendment. We said that made the constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of that right is that it is a personal one. *McCabe v. Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69, *supra*."

VI.

Granting the Relief Sought Does Not Require That the Court Exercise the Administrative Function of Revising the Rate Adjustment.

Appellees contend (p. .....) that the relief sought should be denied because to grant it would require this Court to exercise the administrative function of revising the adjustment. This contention has no merit. It is based on the fact that the Appellants have asked the Court to set aside the orders of the Commission "in so far as the same require or permit a basis of transit" at the primary markets different from the basis at competing interior points.

The opinions and orders of the Commission covered numerous other matters not involved in this suit. If Appellants are right in their contentions, they are entitled to have only that portion of the orders set aside which bear on the discrimination and prejudice complained of. Obviously it was not only proper, but necessary that the Appellants seek to set aside only that portion of the Commission's orders dealing with the situation complained of. The statute under which this suit is brought expressly provides that the Court has jurisdiction to enjoin, set aside or annul "in whole or in part any order of the Interstate Commerce Commission" (28 U. S. C. A. 41 (28)). The same contention made by Appellees was urged in *C., M., St. P. & P. R. Co.* v. *U. S.*, 33 F. 2d 582. In rejecting it the court said (l. c. 589):

"Congress, however, conferred upon the court jurisdiction to enjoin or set aside so much of an order as is invalid. The statute (28 U. S. C. A., Sec. 41 (28)) confers jurisdiction over all 'cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.'"

The method and mechanics of eliminating the existing unlawful discrimination is not the concern of this court. This Court passes judgment upon the challenged principles of law in so far as they are relevant, but it is not necessary and the Court will not attempt to direct the precise manner in which the administrative body will correct an unlawful situation. In *Pacific Power & Light Co.* v. *U. S.*, 307 U. S. 156, l. c. 159, the Court said:

"The court has power to pass judgment upon challenged principles of law in so far as they are relevant to the disposition made by the Commission. '* * * a judgment rendered will be a final and indisputable basis of action between the Commission and the defendant.' *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 38, 48 L. Ed. 860, 866, 24 S. Ct. 563. * * * For purposes of judicial finality there is no more reason for assuming that a Commssion will disregard the direction of a reviewing court than that a lower court will do so."

If the Court sustains the contentions of Appellants it will not attempt to tell the Commission exactly what it should do in an administrative way. It will see that its opinion is sufficiently clear that the Commission will not, through misunderstanding it, fail to give the full relief to which Appellants are entitled in the elimination of the unreasonable, discriminatory and unduly prejudicial transit practices now existing between rate-break points and all interior points.

CONCLUSION.

For the reasons discussed in our principal brief, and herein, Appellants respectfully submit that they are entitled to the relief sought and that the Court should direct the trial court to annul and set aside the orders of the Commission, as prayed in the Bill of Complaint.

Respectfully submitted,

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Before the
Supreme Court of the United States
OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON, ET AL.,
Appellants,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, ET AL.,
Appellees.

Appeal from the District Court of the United States for the Western District of Missouri.

TEXAS INTERVENERS' REPLY BRIEF ON BEHALF OF APPELLEES

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I. FOREWORD

This reply brief is filed for and on behalf of the Texas Industrial Traffic League, Fort Worth Grain and Cotton Exchange and the Tex-O-Kan Flour Mills Company, which intervened in the trial court on behalf of appellees.

We shall deal with statements appearing in appellants' brief by referring to particular subjects discussed on pages indicated. The page numbers indicate the pages of appel-

lants' brief on which appear the statements hereinafter replied to.

II. STATEMENT OF THE CASE

(a) Nature of the Suit (P. 2)

Appellants approach this case with the statement that the orders under attack require the so-called primary markets to *pay substantially higher charges* for the privilege of stopping grain in transit than are paid by other shippers for the same service. That statement is erroneous. Individual instances of variance may be found but, in the aggregate, the primary markets do not pay more for that service than other shippers pay.

The orders in question provide a method of determining transit balances at the so-called "primary" markets different from that generally used, this different method having been prescribed at the request of the primary markets. Generally speaking, the transit balance applicable to outbound shipments of grain is determined by deducting the amount paid on the inbound tonnage from the through rate applicable from origin to final destination via the transit point. Such balances vary, depending on the through rates applicable and the amounts paid in to the transit point. The primary markets objected to these varying balances and the Commission at their request determined what the average of these balances would be and prescribed a fixed transit balance known as a "proportional rate" which represents the average of transit balances on all grain handled through the primary market to a given destination.

The use of the fixed transit balance representing the average of all transit balances does not result in primary

markets paying "*substantially higher charges*" than they would pay if they used the actual transit balances determined in the same manner generally used throughout the United States.

Appellants' Exhibit 9 sets forth certain picked examples selected for the purpose of showing the court that the rate-break markets have to pay substantially higher rates on grain transited at such rate-break markets than are paid by interior transit points on the routes passing through the rate-break markets, but they do not present a complete picture of the situation or a true picture as to the tonnage involved. As an example, it is argued (P. 22) that tonnage moving from San Antonio, Texas, to St. Louis, Mo., transited at Kansas City, is subject to a higher rate than when such tonnage is transited at Wichita, Topeka and other points on the indirect route passing through Kansas City. This argument ignores the fact that, as a practical matter, San Antonio transit billing is never used on grain moving under transit from Kansas City to St. Louis because there is plenty of grain throughout the Western District which is avaliable for transit at Kansas City and re-shipment to St. Louis and beyond on which Kansas City enjoys the lowest rate available to any other transit point. Furthermore, San Antonio tonnage may be transited at Kansas City and moved north to Chicago, Omaha, Minneapolis and numerous other points at the lowest rate available to any other transit point.

The illustrations shown in appellants' Exhibit 9 and discussed in brief are paper illustrations which do not arise in actual transit practice and they do not result in any damage to or discrimination against appellants. That is

why the Interstate Commerce Commission found as a fact that the present adjustment of rates does not subject the rate-break markets to undue prejudice and disadvantage.

(b) Commission Reverses Previous Rulings (P. 16)

Appellant is in error in making the following statement on page 17:

> "While the Commission said that there must be a substantial difference in conditions, it found no difference in transportation services and found that the mechanics of transit under the rate-break and under the through rates were exactly the same."

The Commission found (215 I. C. C. 91, R. 539) that there is a substantial difference in the transportation conditions involved in the "proportional system" of transit at rate-break markets and the "transit balance" system used at other points:

Circuity: Under the transit balance system, transit is "usually confined to points situated on reasonably direct routes." If the shipment moves via a circuitous route, an out-of-line charge is made. Under the proportional system, unlimited circuity without extra charge is permitted.

Participation: Under the transit balance system, outbound shipments from the transit point are confined to the rails of the inbound carrier and its connections participating in the through rate. Under the proportional system, outbound shipments may move from rate-break markets via any line without restriction as to routes.

> "Through rates less than the combinations of locals on the rate-break markets are therefore available to transit operators at those markets on all shipments to all destinations to which the proportional rates are

published, from all origins, and over all routes through those markets, no matter how circuitous." *Grain and Grain Products Within the Western District and for Export*, 215 I. C. C. 91. (R. 539.)

Appellant erred in stating on page 17 that the advantages existing at rate-break markets "are due entirely to the location and facilities of such markets." They are due in large part to the prescription by the Interstate Commerce Commission of the "proportional system" of transit which is permitted by the Commission only at rate-break markets. Certain markets which are just as well located and which have just as good facilities as some of the rate-break markets do not enjoy either the rate-break or the proportional system of transit because the Commission refused to prescribe those methods of making rates and determining transit balances except at the points indicated in appellants' brief.

(c) Direct and Indirect Routes (P. 18)

Generally speaking, when the rate-break markets are on the direct route the tariffs never provide for higher transit balances from the rate-break markets than apply from other transit points. The rate-break markets are on indirect routes in every instance depicted on Plates I to V, inclusive. (R. 723-728.)

So far as we are aware, the record does not show any instance where a rate-break market located on a direct route, the shortest route available between origin and final destination, pays a rate higher than the rates applicable via other transit points. If there be such an instance, it is the exception, not the general rule.

The example cited on page 19 of appellants' brief is a case where the route through Kansas City is an "indirect route." The short route is via the Wabash Railway (Plate III, shown as page 5 of brief). If the rate-break markets were located on the "direct route," the rate disparity depicted on page 19 of brief would not exist.

(d) Discrimination Now Existing (P. 20)

Appellants predicate their statement as to discrimination on the erroneous assumption that the primary terminal markets actually "pay substantially higher rates" when transit is taken at terminal markets than when taken at other markets. The maps presented by appellants (R. 723-728) depict tariff situations which they have developed by their experts but there is not one word of testimony in the record showing that the terminal transit operators pay the higher rates referred to on pages 20 to 23 of their brief.

The constant transit balance, otherwise known as a proportional rate, is an average of transit balances from all origins to a given destination. It is lower than the highest transit balance and higher than the lowest transit balance that would be available if the "actual balance" system were employed at the rate-break markets, as it is at other markets.

The price of all grain of a given type and grade reaches a common level at the terminal markets. Shipments of grain or products moving out under transit to Chicago, St. Louis, or any other destination, moves at the constant balance or proportional rate determined by the Commission as the average of all transit balances that would apply under the "actual balance" system. They do not pay any more on

grain originating at San Antonio, Texas, (Plate IV) than they pay on any other grain.

There is no evidence in this record that primary terminal markets "pay substantially higher rates" in the aggregate than any other transit point. They have available plenty of inbound grain which they can transit to St. Louis just as cheaply as any other market can. They can transit San Antonio grain and send it to hundreds of destinations, other than St. Louis, just as cheaply as any other market can.

The disparities pointed out on pages 20 to 23 of appellants' brief are tariff disparities arising from the fact that the rate-break markets named are not on the short direct routes in the instances shown. There is no evidence showing that they actually pay those higher rates. The court should take judicial notice of the fact that they would not pay those rates when they can use other origin grain without penalty to the destinations named.

(e) Difference in Service and Cost (P. 24)

As previously stated, the Commission did find that there is substantially more transportation service available to terminal market operators without additional cost than is available to transit operators using the transit balance system whereby they have to pay the actual outbound balance plus out-of line charges where circuitous hauls are employed. Operators using actual outbound balances also must pay combination of locals if they route shipments via railroads other than the inbound carrier and its participating connections.

III ARGUMENT

(a) Difference in Transit Service or Cost Thereof (P. 39)

Appellant erred in the following statement on page 39 of its brief:

> "Here the transportation services rendered to complainants at terminal markets and to their competitors at other markets are exactly the same."

Transportation services available to operators at the terminal markets are substantially greater than those rendered without additional cost to operators using the actual transit balance system. Under the actual transit balance system, the movement is confined to reasonably direct routes. If moved via circuitous routes, out-of-line charges are usually assessed in addition to the through rate. Outbound shipments may be routed only via the inbound carrier or carriers participating with it in through movements. If not so routed, combinations of locals substantially higher than the through joint rate will be assessed. (215 I. C. C. 91, R. 539.)

If the elevator located at Turner, Kan., referred to at page 39 of appellants' brief, were placed outside the Kansas City switching limits, it would be deprived of the ceiling in outbound balances accorded operators at rate-break markets, such ceiling being the average of all transit balances applicable under the usual transit balance system to a given destination. While it might result in that elevator being able to ship tonnage *originating at certain points* under the usual transit balance system for less than is now available to it, those instances are exceptional and the advantages as to circuitous hauls, unlimited selection of outbound

routes, etc., which it now has and which it would lose by being placed outside the Kansas City switching limits, would far outweigh any benefits it would obtain by such removal.

The cases cited by appellant at pages 42 to 52, inclusive, are not in point because they all deal with situations where the carrier or carriers charged a shipper or locality more for performing a given service than it charged a competing shipper or locality for performing the same or a substantially similar service. The issue involved here is whether or not the Commission has the power, on the request of certain markets, to determine, fix and prescribe an average figure which represents all of the varying transit balances that it would pay on all of the individual shipments going to given destinations. That system of rate making has long been in existence and has been upheld by the courts many times.

> "Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switchig rates, is within the competence of the Commission." *Illinois Commerce Commission v. United States*, 54 S. Ct. 783 (788); 292 U. S. 474.

The reasonableness of group rates must be determined, not by considering the rate from the point of origin to a particular station in the group, but rather as applicable to the entire group.

> "It seems desirable and in no way disadvantageous to either the markets or the growers to have points of production that are close to each other and affected by the same elements of competition and transportation conditions grouped under a common rate, and where such grouping is reasonably done the shorter distances to the markets in question *may be determined by the average distances* from the points reached by both sys-

tems within a given group. Where there is but one such point in a group the distances should be computed from that point, and where there is no such point in a group the distances should be computed from a point that is substantially centrally located in the group." Emphasis supplied.) *Superior Commercial Club v. Great Northern Ry. Co.*, 25 I. C. C. 352 (345).

In *Arlington Heights Fruit Exchange v. S. P. Company*, 22 I. C. C. 149, the Commission prescribed rates from the Pacific Coast to a group extending from the Rocky Mountains east. The order of the Commission in that case was sustained by this court. *A. T. & S. F. Railway v. United States*, 231 U. S. 736; 34 S. Ct. 316.

(b) Difference in Conditions Justify Different Treatment (P. 53)

Appellants predicate their argument on two erroneous assumptions:

First, they assume that the prescription of the average of all transit balances as a fixed transit balance, known as a proportional rate, to be applied on all transit shipments to a given point regardless of the origin from which the tonnage moved, results in "higher charges" to the terminal operator than would apply if the actual transit balances were individually determined and paid in each case. That is not correct.

Second, they assume that the only differences found by the Commission are the direct result of natural conditions not affected by orders of the Interstate Commerce Commission or by transportation performed by the carriers. That assumption is not correct because the average or proportional transit system was prescribed at certain market

points. The location of those markets did not create a departure from the usual individual transit balance system. That departure was brought about by the desire of the markets and the orders of the Interstate Commerce Commission.

As pointed out by the Commission, *there is a substantial difference* in the transportation service and routing privileges available under the proportional rate system from those available under the actual transit balance system applicable at other than rate-break market points. The Commission could have prescribed a straight mileage scale of rates to apply via all markets, regardless of their location or size. Due to the pleas of certain markets, it determined reasonable maximum through rates via those markets and broke those rates into component parts so that the outbound balance to any given destination would be the same, regardless of the origin of the grain. By doing so, it made substantially more transportation available to those markets, without extra charge, than is available to other than rate-break markets.

In the orders here under consideration, the Commission did not attempt to equalize natural advantages or deprive any market of the advantage of its location. Averaging the individual transit balances and applying that figure as a constant balance from all points of origin is the application of a principle which the carriers and the Commission have long used in making group rates. It does not offset or equalize the natural advantages possessed by any market or operator.

(c) Grounds Upon Which Commission Dismissed Complaints (P. 83)

Appellants failed to state on page 84 of their brief all of the reasons given by the Commission for its refusal to grant the relief sought. In addition to the reasons set forth on page 84, the Commission said an order granting such relief would:

1. Impose an additional burden upon the carriers in respect of one of their most comprehensive adjustments and important groups of commodities at a time when they were least able to bear it. (229 I. C. C. 15, R. 643.)

2. Make applicable a great number of transit balances lower than the proportional rates out of the rate-break markets on indirect routes. (229 I. C. C. 15, R. 643.)

3. Result in the establishment of one factor rates less than the rate-break combinations over direct routes. (229 I. C. C. 15, R. 643.)

This decision should also be read in the light of previous findings by the Commission showing that the dual system of transit resulted in preferences prohibited by Section 3 of the Interstate Commerce Act. The dual system of transit had been condemned by the Commission upon five previous occasions. (231 I. C. C. 795, R. 650.)

(d) Disruption of Rate Structure by Dual System (P. 85)

Appellants erred in statement on page 91 that the Commission has the power to keep the situation under control and prevent the re-establishment of the unrestricted dual system. The so-called dual system refers to the system of transit in effect at the rate-break markets prior to the first grain decision, 164 I. C. C. 619, under which the operators

at those markets used the average of balances as a maximum balance, while they at the same time had the benefit of actual transit balances where less. If the relief sought by appellants and denied by the Commission in 229 I. C. C. 9 and 231 I. C. C. 793 were granted, the dual system would immediately be restored and the Commission would have no power to control the unlawful conditions heretofore found existing under that system. The statement by the Commission that granting the relief sought would re-establish the dual system is amply supported by the testimony in both the first and second grain decisions, 164 I. C. C. 619 and 205 I. C. C. 301.

(e) Weight to Be Accorded Dissenting Opinions (P. 94)

The individual expressions of dissenting Commissioners referred to on pages 94 to 98, inclusive, of appellants' brief overlook the following testimony by *Witness K. K. Smith, assistant to the president of the Kimbell Milling Company, Fort Worth, Texas*, appearing on pages 1319 to 1323, inclusive, of the transcript of record in Docket 27,628:

> "It was possible under this dual system of rate application for operators at terminal rate points, more specifically Kansas City, to use their less favorable tonnage into Kansas City against a sale calling for proportional tonnage, whereas the higher paid in freight bills were applied against the sales to destinations where the balance out from Kansas City was materially lower than the proportional rate.
>
> "For example, on August 23, 1928, we bought a car of wheat, MP 33059, shipped from Kansas City on transit tonnage with three tonnage applications. The first application covered grain originating at Brownell, Kansas, with 20 cents paid into Kansas City and a balance out of 28 cents to Group 3 or a total through rate from Brownell to Texas Group 3, via Kansas City, of

48 cents per hundred weight. The proper rate would have been 57 cents. The Arnold, Kansas, portion had 20½ cents paid into Kansas City, 29½ cents balance out to Group 3, with a through rate of 50 cents or a proportional rate of 57½ cents, while Neola, Kansas, only showed 19½ cents into Kansas City, 26½ cents balance out, or a through rate of 46 cents to Group 3 Texas; the proportional rate would have (R. 1319) been 56½ cents.

"On February 15, 1927, we bought car RI 50750, also shipped from Kansas City on tonnage which originated at Kanopolis, Kansas, with 19 cents paid in to Kansas City, 29 cents balance out, or a through rate from Kanopolis to Group 3 Texas, via Kansas City, of 48 cents per hundred weight. In case of the car with tonnage behind it originating at Kanopolis, Kansas, the proportional rate would have been 19 cents into Kansas City and 37 cents beyond, or a through rate based on the Kansas City proportional adjustment of 56 cents. They in reality only paid 48 cents, or a saving of 8 cents per hundred weight.

"Thus you see a dealer operating at a market where the dual system of rates was in effect had the opportunity to shuffle his tonnage in such a way as to effect a tremendous profit or saving in freight. (R. 1320.)

"Prior to the 17,000 rates, we understand it was the custom, wherever possible, to deliver grain against futures with proportional tonnage on the outbound move, thereby permitting the deliverer of the grain to work off his least desirable tonnage and retain his good transit billing, with low (R. 1321) balance, if any, and oftentimes come in direct competition with the party taking delivery of the grain.

"In our operations at Kansas City we had occasion several years ago, to buy a round lot of milo maize just delivered Kansas City. When shipment was made from storage stock we were tendered Kansas City proportional tonnage. During the process of disposing of this stock of milo maize we found the operator from whom we bought the grain actually underselling us

at given destinations even though we used the same basis as Kansas City.

"He had kept back the favorable tonnage with balances out lower than the proportional rates, whereas we were forced to work on the Kansas City proportional rates. Thus it becomes possible for a dealer operating under a dual system of rates to make material savings when he pays a smaller balance out than the Kansas City proportional rate or, when it suits his convenience, to undersell a shipper who must operate under proportional rates. (R. 1322.)

* * * * *

"It is alarming to contemplate the arbitrary advantages that would be accorded the Kansas City market, and the mills situated there, as pointed out above, where they are accorded transit balances that result from selective application of billing and at the same time be insured by having the proportionals to always operate as the absolute maximum that they would have to pay." (R. 1323.)

The foregoing testimony of Witness Smith was not controverted, though counsel for the appellants herein vainly endeavored to break it down by cross examination. In the lower court the appellants attempted to dispose of this testimony by stating that all transit operators have the right to select the freight bill to be offered upon the reshipment of grain after transit and the fact that a Kansas City dealer could send Omaha grain to Chicago for 9½ cents per 100 pounds (16 cents less 6½ cents paid in) does not mean that he would have any advantage. *Witness Smith's testimony* does not go to that situation. He showed that Kansas City operators could, *and did*, ship grain from certain origins to Texas under the dual system of transit at rates substantially less than the published tariff rates available to other operators. See the following examples:

	Rates in Cents Per 100 Lbs.		
Origins	*Kansas City Paid*	*Tariff Rates*	*Advantage*
Brownell, Kan.	48	57	9
Arnold, Kan.	50	57½	7½
Neola, Kan.	46	56½	10½
Kanopolis, Kan.	48	56	8
Average Kansas City Advantage			9

The Interstate Commerce Commission heard many witnesses and listened to a great deal of evidence depicting the unjust and unreasonable preferences which the rate-break markets enjoyed under the dual system of rates.

(f) Lower Court's Assumption That There Are Two Transit Methods (P. 99)

The lower court was entirely correct in assuming that there are two methods of transit.

The usual method is to determine the transit balance by deducting the charge paid on the inbound commodity from the through rate on the commodity shipped from point of origin to final destination applicable via the transit point. That is the system which we have designated as the actual transit balance system.

There is another and a different system prescribed for application at rate-break markets, that system having been prescribed on application of those markets. Under that system the through rate applicable from origin to final destination is ignored in making individual transit applications. The rate from point of origin to transit point is also ignored except that it must represent a certain minimum

figure. In using that system the average transit balance fixed by the Commission is applied to each given destination, regardless of the origin of the tonnage and regardless of the through rate applicable.

They are two entirely different systems and the lower court was entirely correct in its assumption.

(g) Interior Points Transiting on Other Than Through Rates (P. 100)

The lower court was entirely correct in assuming that interior transit points transit only on through rates.

What the appellants refer to as "combinations" are not combinations in fact but they are through joint rates determined by the Commission as reasonable maximum rates, after which they are broken into factors to and from the appellant markets by ascertaining the aver_e of all outbound balances from a given market to a given destination and adding that fixed balance to the inbound rates in such manner as to equal the reasonable maximum through joint rates theretofore fixed by the Commission.

> "The rate-break combinations on the Missouri River markets from Kansas, Nebraska, and other western states to Chicago and St. Louis were the result of first checking in reasonable through rates from the origin key points to the final markets, over the direct routes through the Missouri River markets, and then breaking them back into inbound local rates to the latter markets and proportional rates beyond, on the basis of average relative mileages, resulting in proportional rates approximating the average transit balances that would have resulted if one-factor through rates with transit, in lieu of the rate-break combinations, had been prescribed." *Grain and Grain Products Within the Western District and for Export*, 205 I. C. C. 301, 328. (R. 305.)

So far as the appellant markets and competing interior markets are concerned they each have the benefit of through rates which have been found by the Commission to be reasonable maximum rates. Those rates have not been attacked by appellants.

(h) Dual System Entirely Abolished (P. 101)

The lower court was entirely correct in holding that the Commission found that it could not correct the unlawful conditions existing prior to the General Grain decisions without abolishing the dual system of transit, that is, the use of the transit balance system and the proportional transit system by the same market at the same time. The exception made in the application of rates for the purpose of permitting one carrier to meet the competition of the other did not continue or restore the dual system of transit. Permitting other than rate-back markets to transit on those rates did not continue or restore the dual system of transit because the points transiting on those rates used only one transit system, that is, the transit balance system.

The Commission did abolish the dual system of transit and the lower court was entirely correct in so holding.

(i) Commission Found Dual System Unduly Prejudicial to Other Markets (P. 102)

The opinion of the lower court (R. 740) quoted by appellants on page 102 of their brief, to the effect that the Commission found the availability of both methods of transit resulted in undue preference of rate-break markets over other transit points, is correct. In the second grain decision, 205 I. C. C. 301, the Commission cited numerous instances

where important markets other than rate-break markets were unduly prejudiced by the preferences available to operators at rate-break markets through the juggling of outbound balances by reason of the fact that they could use the proportional rate as a maximum or ceiling and apply lower actual balances where available.

"One of the advocates of strict observance of the rate-break combinations, without exception, is Hutchinson, Kans. Hutchinson is not a rate-break market, but is an important interior market in volume of grain handled. Its grain is bought on basis of the Kansas City price minus the freight rate to Kansas City, and its shipments to eastern markets are on the rate-break combinations on Kansas City and St. Louis. Hutchinson represents that prior to the establishment of the Part 7 adjustment, when a transit balance lower than the proportional rate was available to the Kansas City dealer in reshipping from Kansas City, and only the proportional rate beyond Kansas City was available to the Hutchinson dealer in shipping direct to the East through Kansas City, it did very little business in the East; that during the period of the Part 7 adjustment, when only the proportional rate was available both to the Kansas City dealer in reshipping from Kansas City and to the Hutchinson dealer in shipping direct through Kansas City, its business in the East substantially increased; and that since the restoration of the old adjustment its trade in the East has again declined." (336.) (R. 314-315.)

* * * * *

"One comparison is of the charges paid by dealers at Omaha and Hutchinson, respectively, on a car of high-protein wheat from Hutchinson through Kansas City and Omaha to Minneapolis. The Hutchinson dealer, shipping through to Minneapolis, would pay the flat rate to Kansas City plus a proportional rate of 15.5 cents thence to Minneapolis. The Omaha dealer would pay, in the first instance, the flat rate to Kansas City plus the proportional rate of 6 cents thence to Omaha. To Chicago the proportional rate was 15 cents

from both Omaha and Kansas City, and would apply on a shipment of low-protein wheat from a point in interior Nebraska to Chicago. By transiting at Omaha on the proportional rate from Kansas City to Chicago, the Omaha dealer would have available an inbound-transit credit of 6 cents, which could be used in connection with the outbound shipment from Omaha to Chicago at the transit balance of 9 cents of the proportional rate from Kansas City to Chicago, on the low-protein wheat from the interior point in Nebraska. This would have the effect of transferring the application of the proportional rate of 6 cents from Kansas City to Omaha from the Hutchinson car to the interior Nebraska car, *and of giving to the Omaha dealer free transportation from Kansas City to Omaha of the Hutchinson car. The final effect would be an advantage to the Omaha dealer over the Hutchinson dealer of the difference between the proportional rates from Kansas City and Omaha to Minneapolis, which was 4 cents.* In other words, the Omaha dealer, upon surrender of the freight bill on the car of low-protein wheat from Nebraska and shipping out, at the proportional rate of 11.5 cents, the high-protein wheat from Hutchinson, could sell the Hutchinson wheat at Minneapolis at a delivered price of (337) $1.115, or 4 cents lower than could the Hutchinson dealer, assuming a market price of $1 at both Omaha and Kansas City." (Emphasis supplied.) *Grain and Grain Products Within the Western District and for Export*, 205 I. C. C. 301, (337-338.) (R. 315-316.)

It is true, as stated by appellants, that the Commission did find that the users of transit balances at the primary markets under the dual system of transit had an undue preference over the users of proportional rates but the Commission further found that the operators at the primary or rate-break markets were unduly preferred by the dual system of rates and that the operators at other than rate-break markets were unduly prejudiced thereby. After citing the unlawful conditions existing under the dual sys-

tem of transit, the Commission concluded by the following statement:

> "The finding in the original report that the rate-break combinations must be the exclusive basis of charge on shipments through the rate-break markets, when stopped at those markets, is affirmed." (205 I. C. C. 342.) (R. 321.)

(j) Commission Found That Primary Markets Were Not Injured (P. 109)

Appellants criticize the holding of the lower court to the effect that the Commission found that no substantial injury to the primary markets had been shown by reason of the granting of transit under the transit balance system at interior points. The holding of the lower court in that respect is correct.

The Commission made the following findings:

> "It seems clear that the transit at points other than the rate-break market on the indirect route, resulting from the further modification of the findings in the *Grain case*, was at most merely an aggravation of a general competitive situation which had already foreshadowed these complaints, and that it afforded a welcome additional argument in the general cause rather than a sound basis for a claim of undue preference." *Grain and Grain Products Within the Western District and for Export*, 229 I. C. C. 9 (14). (R. 642.)
>
> • • • • •
>
> "We find that the present adjustment of rates on grain and grain products throughout the western district does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage." *Grain and Grain Products Within the Western District and for Export*, 229 I. C. C. 9 (16). (R. 644.)

At page 110 of their brief, appellants argue that evidence of injury to the rate-break markets should not be required as the situation speaks for itself.

If there is any one principle which is settled and universally followed by the Commission and the courts in administering the Interstate Commerce Act, it is that there can be no violation of Section 3 without a showing of damage to the person or locality alleged to be prejudiced. The act does not condemn mere differences in rates. Neither does it condemn all discriminations or preferences. Before a discrimination or preference may be found to be unlawful, it must first be found to be "undue or unreasonable" and it cannot be undue or unreasonable unless it results in damage to the person, persons or localities claiming to be prejudiced or discriminated against.

> "There is here a clear discrimination in the rates charged for the movement of the same kind of traffic under similar transportation conditions. But to prove that this discrimination results in a violation of Section 3 it must be shown that complainant suffers injury by reason of the discrimination, and that this injury will cease if the discrimination is removed, regardless of the manner of its removal." *Duluth Chamber of Commerce v. Chicago, St. Paul, Minneapolis & Omaha Ry.*, 122 I. C. C. 739 (742).
>
> "To be undue in violation of Section 3, preference and prejudice must result in injury to the prejudiced party."
>
> * * * * *
>
> "We find that the failure and refusal of defendants to establish a smelting-in-transit arrangement at East Helena on lead ore and concentrates from Kellogg and Bradley to eastern destinations, such as they have established from points in the Coeur d'Alene district served by the Northern Pacific, has not been shown to have resulted or to result in unjust discrimination or

undue prejudice." *Bunker Hill & Sullivan Mining & Concentrating Co. v. Northern Pacific Railway Company, et al.*, 129 I. C. C. 242 (246).

"On the other hand, defendant's showing that the rate level on aluminum is higher than on tin and copper does not relieve complainant of the burden of establishing the fact of undue prejudice and preference. We cannot conclude that it exists merely because the rates are different and there is some competition between the metals. There must be a further showing that the difference in rates has operated in some way to complainant's disadvantage in marketing aluminum. There is no such evidence here and we accordingly find that the ratings and rates assailed are not unduly prejudicial or preferential." *Aluminum Co. of America v. A. T. & S. F. Railway*, 146 I. C. C. 363 (372).

The system of transit in effect at rate-break markets is in the nature of a group adjustment. The Commission first determined reasonable maximum through joint rates and then broke them back so that the outbound proportional rates would represent the average of individual transit balances that would have resulted if one-factor through rates with transit had been prescribed and applied in the same manner as prescribed and applied generally throughout the territory. This average or group method of arriving at fixed transit balances was based on the plea of the markets for the prescription of constant balances or proportionals.

When the entire structure is considered as a whole this basis is more beneficial to the rate-break markets than the "actual balance" basis applicable at interior transit points but, like any group adjustment, tariff illustrations can be shown which, if considered alone, would indicate that the charges assessed and collected for certain services are ex-

cessive. If all of the stations situated within a circle circumscribed around St. Louis and Kansas City were placed in one group and the same rate were applied to and from all points in that group, such rate being based on a reasonable scale applied to the average distance to every station in the group, the charges to the stations on the near side of the group would exceed the charges based on the scale used as the basis for the rate to the group as a whole. Likewise, the charges to the stations on the far side of the group would be less than the charges based on the same scale. But it has been universally held by the Commission and the courts that the mere difference in the ton-mile earnings existing by reason of the rates to the near side stations being the same as the rates to the far side stations in the group is not unreasonable and unjust and, therefore, it is not unlawful.

The same principle applies in the case at bar. By combing the tariffs carefully, an expert rate man can locate cases which are illustrated by Plates I to V (R. 723-727) and pointed out by the appellants in their brief. If it were necessary for Kansas City to supply the St. Louis demand with San Antonio tonnage, and if it were necessary that they ship San Antonio tonnage to St. Louis only, the resulting difference in charges pointed out by appellants would not be unlawful because that is a mere incident of the general adjustment and the higher charge paid on the San Antonio tonnage when transited at Kansas City would be offset by the lower charge on tonnage transited at Kansas City and forwarded under the average balance where the competitive interior transit point would have to pay the actual balance higher than the average. That is an incident of all group adjustments.

However, in the grain business the rate-break markets, as a practical matter, are never compelled to use transit tonnage in such way as to result in their paying more than the interior transit point. Grain of given types and grades reaching Kansas City or any other rate-break market attains a common value. The identity of the grain is not preserved. Grain from Texas, from Oklahoma, from Montana, from Nebraska, from Kansas, and other producing points, is all commingled when it reaches the storage point. When Kansas City receives an order for grain to go to St. Louis or beyond, it is not necessary to apply tonnage originating at San Antonio. And when Kansas City has San Antonio tonnage on hand in storage, it is not necessary to forward that tonnage to St. Louis. Those markets can so operate their business as to avoid paying any through charges which exceed the charges available to interior transit points.

This explains the absence of testimony showing that the rate-break markets are damaged or injured by the present adjustment. In the absence of a showing of damage or injury, a finding of undue prejudice could not be sustained.

IV. CONCLUSION

In the original grain decision, 164 I. C. C. 619, the Commission found that the use of the dual system of transit at rate-break markets was unduly prejudicial to operators at other transit points, unduly preferential of operators at rate-break markets, and unduly discriminatory in favor of operators at the rate-break markets who had the largest available supply of outbound balances. That finding was supported by substantial evidence. In the second hearing further evidence was introduced showing the manner in

which transit operators at other than rate-break markets were injured by the use of the dual system at such rate-break markets. The Commission re-affirmed its previous finding. (205 I. C. C. 301.) The dual system was cancelled.

Appellants filed complaints seeking to have the dual system of transit restored. After adequate hearing, the Commission found that appellants had not shown that they were unduly damaged or injured by being limited to one system of transit. On appeal to the court the lower court held that the facts amply support the Commission's conclusions. We submit that the record shows that the lower court was correct in its findings and conclusions. We respectfully ask that the decision of the lower court be affirmed.

Respectfully submitted,

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No. 143

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE BOARD OF TRADE OF KANSAS CITY ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

NOVEMBER 1941.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 143

THE BOARD OF TRADE OF KANSAS CITY ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The opinion of the specially constituted District Court (R. 737), *Board of Trade of Kansas City* v. *United States*, is reported in 36 F. Supp. 865.

The reports of the Interstate Commerce Commission entitled "*Rate Structure Investigation, Part VII, Grain and Grain Products* within the Western District and for Export" appear in 164 I. C. C. 619; 173 I. C. C. 511; 205 I. C. C. 301; 215 I. C. C. 83; 223 I. C. C. 235; 229 I. C. C. 9; 231 I. C. C. 793 (R. 27, 233, 268, 526, 612, 635, 647).

QUESTIONS PRESENTED

In the above-entitled proceeding, after comprehensive investigation, the Commission determined that the method of making rates for the great volume of grain traffic to and from the important primary grain markets such as Minneapolis, Omaha and Kansas City should be a system of rates breaking on the markets ("rate-break combinations") consisting of local rates to the markets and proportional rates from the markets. It then proceeded to work out and prescribe graded in-bound local rates from all the western grain-producing states to the primary markets and sensitively related out-bound proportional rates from the several markets to important destinations, gateways, and secondary markets. One important purpose of this method of rate-making was to correct objectionable and discriminatory conditions previously existing under a dual system of rates, under which the traffic moved from the markets on both proportional rates and a multitude of lower, varying transit balances. (See *infra*, p. 15.) To this end, the Commission required that the prescribed rate-break combinations should be the exclusive basis of charge on traffic moving through the primary markets; that all traffic transited at the markets, that is, shipped to the markets for merchandising, milling, mixing or other treatment and later reshipped, should move on the prescribed local rates into the market and the prescribed open proportional rates from the market, and that all one-factor through rates carrying the transit privilege at the markets, which made possible the varying transit balances from the markets, should be canceled.

Under the prescribed system of rates the primary markets are accorded liberal transit privileges. Grain dealers and millers located there can draw in grain over any railroad in any direction, and, after transit, ship the grain or the products thereof to any destination over any route at the proportional rates prescribed as the reasonable out-bound component of the rate-break combinations. This system of rates, as applied to the

entire traffic, the Commission found, gives the rate-break markets a decided advantage over the so-called interior points, which do not have the rate-break system, and can transit only under a restricted form of transit under overhead through rates.

To permit carrier competition, the orders make one exception to the rule for the exclusive application of the rate-break combinations on traffic moving through the primary markets. In some instances a particular market is served not only by several direct-route carriers but also by other carriers forming indirect routes which pass through a second market, as in the case of the numerous routes from Omaha to Chicago, most of which are direct, while some, termed indirect, run through Kansas City. The orders authorize the indirect-route carriers to apply the prescribed proportional rates from one market to another as overhead through rates over the indirect route passing through an intermediate third market, but, in order to preserve the rate-break system, prohibit transit under such overhead through rates at the intervening market, because to permit the privilege under such circumstances would result in transportation from the intermediate market at a transit balance substantially lower than the prescribed reasonable proportional rate from that market, and thus restore the dual system. Under all other circumstances the primary markets are granted the transit privilege under liberal rules and regulations.

At the so-called interior points—mill and elevator points other than the primary markets—a restricted form of transit is generally granted. The carriers voluntarily extended this restricted form of transit to interior points on the direct routes under the rates prescribed by the Commission. In a supplementary report, the Commission permitted the indirect-route carriers to grant the same restricted form of transit to interior points on the indirect routes, upon a finding that the denial of similar transit to the competitive interior points on indirect routes would result in undue prejudice against them and undue preference of the interior points on direct routes. The validity of the grant of transit to interior points on direct routes is not

here involved. The prescribed proportional rates from the primary markets (which were reductions), are not attacked, nor are the prescribed in-bound local rates to the primary markets. The bill alleges that the orders are invalid insofar as they prohibit transit at the rate-break markets and permit transit at the interior points under the above-stated circumstances, and seeks to set aside the orders to this extent only.

The question presented, therefore, is whether the Commission's orders are invalid insofar as they prohibit the grant of transit at the primary markets under proportional rates from other primary markets as applied over indirect routes in order to meet carrier competition, while permitting the restricted form of transit at intermediate interior points on the indirect routes. Subordinate questions presented by appellants in that connection are:

1. Whether the denial of transit at the primary markets under the circumstances and conditions found results in rates that are unreasonable, unjustly discriminatory, or unduly preferential, in violation of sections 1, 2 and 3 of the Interstate Commerce Act.

2. Whether the grounds upon which the Commisison based its finding that the denial of the privilege at the primary markets does not result in unjust discrimination or undue prejudice or preference are insufficient in law.

3. Whether in reaching this conclusion the Commission improperly considered other than transportation conditions.

4. Whether the orders are invalid on the ground that they deprive the primary markets of natural advantages.

STATUTES

The provisions of sections 1 (5), 2, 3 (1). 15 (1), and 15a of the Interstate Commerce Act (49 U. S. C.) are as follows:

> SEC. 1 (5). All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just

and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, draw-back, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

SEC. 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation

and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

SEC. 15a. When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

In the exercise of its power to prescribe just and reasonable rates the Commission shall give due considera-

tion, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

STATEMENT

Appellants' bill (R. 1) seeks to enjoin, to the extent indicated above,[1] the orders issued with four of the reports in *Rate Structure Investigation, Part VII*, as follows: October 22, 1934, 205 I. C. C. 301; report, R. 268–525; order, R. 525–526. March 4, 1936, 215 I. C. C. 83; report, R. 527–584; order, R. 585–586. July 12, 1938, 229 I. C. C. 9; report, R. 635–646; order, R. 646–647. March 13, 1939, 231 I. C. C. 793; report, R. 648–654; order, R. 654–655.[2]

The United States and the Commission, named as defendants, filed answers (R. 655, 658). Various parties intervened as defendants and filed answers opposing the relief sought by the bill, including the regulatory commissions of Montana, Idaho, Oklahoma, and North Dakota, and shipping interests in the west and southwest (R. 684–706, 707).

Final hearing before the court below, specially constituted of three judges, was held at Kansas City, Mo., November 11, 1940 (R. 706–721).

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[1] In the argument, *infra*, section VIII, pp. 86–89, we urge that appellants' bill was properly dismissed because it asks that the rate orders be enjoined only in part; that is, that the court enjoin an integral part of the rate structure administratively designed, and that, therefore, the bill in effect asks the court to *revise* the prescribed rate structure and thus to perform an administrative or legislative rather than a judicial function.

[2] The last two reports cited, also the report of July 27, 1937, 223 I. C. C. 235 (report, R. 613–633, order, R. 634), embrace also the Commission's decisions in certain formal complaints, filed after the close of the main proceeding, referred to *infra*, pp. 11, 32.

January 21, 1941, the court rendered its opinion (R. 737), finding the alleged grounds of invalidity to be without merit and dismissing the bill. Findings of fact and conclusions of law were adopted (R. 750, 754). From the final decree (R. 756) filed February 24, 1941, a direct appeal to this Court was taken.

Original proceedings before the Commission

The Commission's investigation was initiated December 30, 1926, in response to the Hoch-Smith Resolution (43 Stat. 801; 49 U. S. C. 55), to determine whether the rates, rules, regulations, and practices maintained by the rail carriers for the transportation of grain and grain products in the Western District, embracing the territory of the United States west of the Mississippi River, were unjust or unreasonable, unjustly discriminatory, unduly prejudicial or preferential, or otherwise in violation of the provisions of the Interstate Commerce Act. There were then pending before the Commission 58 separate proceedings in which shippers had filed complaint against the rates or relations of rates, or practices of the carriers affecting rates, on grain and grain products in the Western District. These were consolidated with the general investigation.

After extensive hearings the Commission on July 1, 1930, issued a report and order and, on April 13, 1931, a supplemental report, 164 I. C. C. 619 (R. 27–232); 173 I. C. C. 511 (R. 233–267). In a suit instituted by the carriers, this Court, in *Atchison, etc., Ry. Co.* v. *United States*, 284 U. S. 248, held that the Commission's denial of a petition for rehearing filed by the carriers, which alleged changed conditions since the close of the hearings, amounted to a denial of a full hearing, and set the order aside.

Rehearings

Thereafter the proceeding was reopened for rehearing upon all issues involved. Extensive further hearings were held, a

mass of additional evidence was submitted, briefs were filed, and the questions involved were reargued orally before the Commission.

October 22, 1934, the Commission issued its report on further hearing, 205 I. C. C. 301 (R. 268–524), in which, in the light of the enlarged record fully reflecting the conditions then existing, it prescribed a revised rate structure on grain and grain products in the Western District, found by it to be reasonable and free from undue preference and prejudice. Many of the findings of the earlier reports were affirmed, many were modified.[3]

With the report an order was issued (R. 525–526) which required the respondent carriers to establish, maintain, and apply to the interstate transportation of grain and grain products, rates not exceeding those prescribed in the report, and practices in harmony with the findings therein. The prescribed rates are set forth in an Appendix to the report (R. 490–524).

March 4, 1936, a supplemental report, 215 I. C. C. 83 (R. 527–584), and an order (R. 585–586) were issued, clarifying and modify in certain respects the findings in the previous report.

These orders were issued under section 15 (1) of the Interstate Commerce Act, upon findings of unreasonableness and undue preference and prejudice, in violation of sections 1 (5) and 3 (1). In addition to numerous specific findings, the following general findings were made in the report of October 22, 1934, 205 I. C. C. 472 (R. 473):

> We find that the present rates for the interstate transportation of wheat and coarse grains and their products are unreasonable and unduly preferential and prejudicial to the extent they exceed the rates pre-

[3] The original findings as to the rate-break structure were affirmed. There were modifications of the original findings as to the rate levels in the Southwest and the far West. The new report prescribed higher rate levels in those territories.

scribed in the appendix hereto, to be applied in accordance with the discussion and findings as to rate break, relation of commodities, transit, etc., herein previously set forth.

* * * * *

We further find that the present rules, regulations, and practices affecting the interstate transportation of grain and grain products throughout the affected territory are unreasonable and unduly preferential and prejudicial to the extent they fail to conform to the findings herein.

The general findings in the supplemental report of March 4, 1936 (215 I. C. C. 83, 128, R. 526, 581–582), are as follows:

We find that the present rates and practices of respondent carriers are unreasonable and unduly prejudicial to the extent they do not conform to the rates and practices required in the report on further hearing, as corrected, modified, and supplemented herein. The report on further hearing and the order entered in connection therewith are corrected, modified, and supplemented accordingly.

The findings in the report on further hearing, to the extent not modified herein, are affirmed.

July 1, 1935, the rates, regulations, and practices prescribed in the report and order of October 22, 1934, were made effective by the respondent carriers, without contest, and they are still in effect, except as modified in certain particulars in the supplemental report of March 4, 1936, which became effective August 1, 1936, and as subjected to later general increases.[4]

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[4] The rates on grain prescribed in this proceeding, along with practically all other rates in the United States, were subjected to the increases authorized in March 1938 in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41 and 746, viz, increases of ¼ cent in rates of 5 cents and less; ½ cent in rates of more than 5 cents but not more than 10 cents; and 5% of other rates, fractions to be resolved in the customary manner. To avoid uncertainty, this brief refers to the prescribed rates, not the subsequently increased rates, unless indicated to the contrary.

Thereafter, formal complaints were filed with the Commission which alleged that certain of the rates and practices prescribed in the above-mentioned reports and orders were unreasonable and unduly prejudicial. These complaints sought a modification of that portion of the Commission's findings which required the exclusive use of proportional rates from the rate-break markets as the outbound basis of charge on shipments transited there. The complaint was because of lack of transit at certain primary markets under proportional rates from other primary markets in instances where the complaining primary markets were intermediate points on indirect routes. Inasmuch as this is the same subject matter as that here before the Court, it is necessary, as a clarifying background, to review the relevant findings in the several reports in the *Grain* case and to explain the reasons upon which those findings rest.

The prescribed rate-break combinations

The system of rate-break combinations, consisting of graded in-bound rates from the country origins to the various western primary markets and sensitively related, separate proportional rates for the out-bound movement from those markets, prescribed for application, in lieu of one-factor through rates, upon the huge volume of grain originating in the western producing regions, was one of the most important and far-reaching adjustments in the Western District. It was prescribed for application from shipping points in Minnesota, the Dakotas, Montana, Iowa, Nebraska, Kansas, Missouri, Oklahoma, Texas, Colorado, and Idaho, embracing both the spring and the winter wheat belts, to such great markets as Minneapolis, Duluth, Omaha, and Kansas City, and from those markets to destinations in the Southwest, to Gulf ports for coastwise and export movement, and to Chicago, Peoria, Cairo, St. Louis, and Memphis as destination points and as gateways to the East and Southeast.

These combinations, or one-factor through rates equivalent thereto, were prescribed as the charge for transportation between the origins and destinations mentioned, whether the shipments moved over routes through the market or over more direct routes not touching the market.[5]

Transit is an integral part of the rate structure ordered, and certain rules and practices affecting it were prescribed in this proceeding. Indeed, the transit practice is so intimate a part of the grain-rate structure itself that the particular kind of structure adopted by the Commission was one intended, among other objectives, to remedy evils incident to the practice as followed at the primary markets. It will aid in clarification to explain the general nature of the transit privilege.

The transit privilege

Under the transit privilege, a commodity may be shipped from a point of origin to a named destination, there delivered to the consignee, and, after merchandising or processing, the same commodity or its equivalent or its manufactured product may be forwarded to a final destination at a total transportation charge less than the sum of the rates to and from the point of stoppage which would be applicable in the absence of the privilege.

The practice rests upon the fiction that the in-bound and out-bound shipments, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination. The effect of the practice is to accord to shippers a more favorable basis of rates than would obtain if the in-bound and out-bound movements were treated

[5] From points in Oklahoma to St. Louis, for example, there are certain routes which pass through Kansas City, and there are also more direct routes which do not touch that market. Whether the shipments move over one route or another, the basis of charge is the prescribed Kansas City rate-break combination. This adjustment enables the primary market to draw in and handle grain at a rate equivalent to that obtained by grain dealers located at "interior" points—points which are not classed as primary markets or rate-break points—located on the more direct routes. (R. 307; see also R. 308-310.)

as separate shipments. The bases of rates under the privilege and rules and regulations governing its application are required by the provisions of the Interstate Commerce Act and the regulations of the Commission to be published in the carriers' tariffs.

The tariffs of all railroads serving the primary markets provide for transit on grain at these markets and have so provided for many years. When the grain moves in from the point of origin to the primary market, it is billed to a named consignee. The car is delivered; the freight charges are paid, a receipted freight bill showing the point of origin, rate paid, etc., is rendered, and the movement of the in-bound shipment ends.* The ultimate destination of the grain or its product is then (usually) unknown. With the exception of the relatively small volume consumed locally, the grain or its products are ultimately reshipped. If the freight or expense bill covering the in-bound shipment is registered with the carriers' transit bureau, it may be surrendered to the carrier in connection with a subsequent out-bound shipment, in order to avoid the payment of a combination of local rates and obtain the application of a lower basis of rates under the transit privilege, based on the fiction of a continuous movement, provided the out-bound shipment is made within a period of one year (subject to extension to two years) from the date of the surrendered freight bill. See R. 41–42, 44, 46, 61–62, 319–320, 404–405, 538–540; cf. *The Transit Case*, 24 I. C. C. 340.

The carriers' tariffs also provide for transit at many lesser markets and mill and elevator points in the western territory, herein termed "interior" points, and, generally speaking, the transit practice as followed at such points is similar in principle to that followed at the primary markets, but, as shown more fully hereinafter, the rules and regulations governing the transit at such points are far less liberal than those applicable at the primary markets and the bases of charge are different.

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*Cf. *A., T. & S. F. Ry.* v. *United States*, 279 U. S. 768, 777–778.

The prescribed rate-break combinations were required as the exclusive basis of charge upon shipments transited at the primary markets, in order to correct the objectionable and unlawful features of the dual system of rates previously available at those markets upon traffic transited there

The Commission's investigation disclosed that there was then in existence a "dual system" of rates applying on grain moving through the primary markets, consisting of (a) *rate-break combinations*, under which transit was granted at the markets; (b) *overhead through rates* from the country origins to the final destinations applicable via the markets, under which transit was also granted at the markets.

(a) *Rate-break combinations.*—These combinations were composed of local or "flat" rates from the country origins to the market and proportional rates from the market to destination. The local or flat in-bound rates were the only rates in effect upon the in-bound movement from the country origins to the market; they applied whether the grain was to be consumed at the market or whether it was later to be reshipped from the market. The out-bound proportional rates were applicable only on grain which had "originated beyond" the market and had moved to the market by rail. They were applicable on continuous through shipments over routes passing through the market; and also on shipments which had moved into the market by rail, there accorded the transit privilege, and subsequently reshipped, provided the rules governing the transit privilege were complied with, including the requirement for the surrender of an appropriate in-bound expense bill. In the event of noncompliance with the transit rules, the out-bound shipment would be charged a local or flat out-bound rate substantially higher than the out-bound proportional rate.[7]

Thus, in the case of the rate-break combinations the lower basis of rates under transit is the out-bound proportional rate,

[7] From Omaha to Chicago, for example, the out-bound proportional rate was 17.5 cents, whereas the local rate was 23.5.

since that rate is substantially lower than the out-bound local or flat rate which would apply if the transit privilege were not available and if the in-bound and out-bound movements were treated as separate shipments.

(b) *Overhead through rates.*—These were one-factor rates applying from the points of origin to the final destinations (or to gateways en route to the final destinations), over lines or routes passing through the primary markets.[8] The carriers' tariffs also provided for transit at the primary markets under these overhead through rates. Where transit was had under such rates, the in-bound shipment would move to the market under the local or flat rate from the point of origin, and the out-bound shipment would move at the balance of the through rate, i. e., the difference between the in-bound rate and the overhead through rate. This difference or balance is called the *transit balance.*

Thus, whether transit at the primary market was had under a rate-break combination or under an overhead through rate, the in-bound shipment would pay the applicable in-bound local or flat rate. The difference in charge under the two forms of transit was in the out-bound factor. Where transit was had under the rate-break combination, the out-bound shipment would move at the proportional rate; where it was had under an overhead through rate, the out-bound shipment would move at the transit balance.[9]

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[8] The term "overhead through rate" means no more than a one-factor rate from a point of origin to a destination applying via a particular point. For example, Kansas City would speak of a one-factor through rate from Dodge City to Chicago over the Santa Fe as being an "overhead through rate" because it applied via Kansas City.

[9] For example, the overhead through rate from Enid, Okla., to Chicago, prior to July 1, 1935—the effective date of the readjustment prescribed by the Commission—was 38.5 cents. This rate was applicable over a route passing through Kansas City and under it transit was permitted at Kansas City. When transit was taken at Kansas City the local rate from Enid to Kansas City of 23.5 cents would be paid upon the in-bound shipment. This rate, subtracted from the overhead through rate of 38.5 cents from Enid to Chicago, left a transit balance of 15 cents as the transportation charge upon the out-bound shipment from Kansas City to Chicago. The

As is made clear in the Commission's reports, the conditions under which transit is granted under overhead through rates are different in many respects from those governing transit under rate-break combinations. The conditions are so different that transit under the one is spoken of as a different form of transit from that under the other. These differences are explained fully hereinafter. Here the fundamental difference in the basis of charge is to be noted. In the case of transit under an overhead through rate, the inbound shipment moves at the flat rate from the point of origin to the transit point. In this respect the practice is the same as in the case of transit under a rate-break combination. But, in sharp contrast to transit under the rate-break combinations, the outbound shipment under transit on overhead through rates moves at the transit balance.

The existence of this dual system of rates was noted in the Commission's first report and some of its incidents were explained (164 I. C. C. 619, 633 et seq.; R. 42 et seq.). "For many years through rail rates on grain and grain products have been largely the combinations of flat rates to and proportional rates from the primary markets, or the so-called rate-break combinations." (Ib., 634, R. 42.)

"The rate-break through primary markets is not exclusively employed, however.[10] There are, as stated, many overhead through rates with transit at the primary markets lower than the combinations on the primary markets and, therefore, many transit balances less than the proportional rates." (Ib., 636, R. 44.)

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proportional rate from Kansas City to Chicago was then 17.5 cents (R. 311). Thus, a shipper at Kansas City who had on hand a freight bill covering a shipment from Enid could defeat the proportional rate of 17.5 cents by surrendering that freight bill and thereby obtain his transportation to Chicago at 15 cents. Another shipper, not having on hand such a bill, would be compelled to pay the proportional rate.

[10] That report spoke as of July 1, 1930. The exclusive rate-break method decided upon by the Commission and now in force became effective July 1, 1935.

After explaining that all shipments to the markets, with certain minor exceptions, were billed in at flat rates, the Commission pointed out the varying bases of charge upon the out-bound shipments. "Whether out-bound shipments are at proportional rates or transit balances depends upon the selection of the in-bound freight bill. If the in-bound freight bill covers a shipment from an origin point from which there is no overhead rate with transit to final destination, the out-bound shipment is at the proportional rate. But grain from a point from which there is no overhead rate with transit can, under present practice, be substituted for grain from a point from which there is such an overhead rate with transit, and can be forwarded, upon presentation of the inbound expense bill covering in-bound transportation from the latter point, at the transit balance due that expense bill. *The transportation service, recording of freight bills, keeping of records, and all incidents of the entire transaction of shipment to and from the primary market are the same whether the out-bound shipment is at the transit balance or the proportional rate*" (164 I. C. C. 634; R. 42). [Italics ours.]

The overhead rates, the Commission said, "apply through markets on both direct and indirect routes. The proportional rate from one primary market to another is frequently made applicable with transit at an intermediate primary market, in lieu of the combination of proportional rates to and from the intermediate market." (Ib., 636; R. 44.)

After citing 11 typical examples of transit balances on wheat, the Commission then explained that *such transit balances applied on any grain in the primary market elevator, upon surrender of the required in-bound billing.*

"For example, the rate on through shipments of wheat from Kansas to Chicago is the flat rate to Kansas City, plus the proportional rate of 17.5 cents beyond, but Kansas wheat stopped at Kansas City for merchandising, milling, or other purpose, may move out of Kansas City to Chicago at 9.5 cents upon surrender of an expense bill showing the in-bound

shipment of an equivalent amount of wheat from Omaha to Kansas City." (Ib., 638, R. 46.)

At the time of the report the proportional rate from both Omaha and Kansas City to Chicago was 17.5 cents, and the proportional rate from Omaha to Kansas City was 8 cents. The transportation charge of 9.5 cents at which the shipment moved from Kansas City to Chicago was the transit balance of the proportional rate of 17.5 cents from Omaha to Chicago, applied with transit at Kansas City.[11]

This dual system of rates, under which the large terminal markets had at their command for application upon out-bound shipments to numerous important destinations and gateways, both proportional rates and a multitude of varying transit balances lower than the proportional rates, was condemned by the Commission as improper and unlawful. Upon the above and other findings of fact and full discussion it found and concluded (R. 41–53):

> We find that the practice of contemporaneously charging both proportional rates and transit balances subjects the shipper under proportional rates to undue prejudice and disadvantage, and gives to the shipper under the lower transit balance an undue preference and advantage, from which the carriers will be required to cease and desist; that the through rates herein prescribed, on the basis of flat rates to the primary markets and proportional rates beyond, will be reasonable; and that

[11] In other words, the 17.5-cent rate from Omaha to Chicago, besides applying over direct routes, also applied over an indirect route via Kansas City. The in-bound shipment from Omaha to Kansas City would pay 8 cents. Upon the outbound shipment from Kansas City, transportation could be obtained to Chicago at 9.5 cents, the transit balance of the Omaha-Chicago rate, notwithstanding that the proportional rate from Kansas City to Chicago was 17.5 cents. However, a shipper in Kansas, shipping direct to Chicago, could not by any such switching of bills obtain transportation at less than the regular rate, i. e., the full combination on Kansas City composed of the flat rate *in-bound* and the full proportional of 17.5 cents out-bound. It was the purpose of the Commission's order to correct such rate inequalities as these.

overhead through rates less than those combinations should be canceled. (164 I. C. C., 645; R. 53.)

This finding was subject to certain exceptions to permit carrier competition, as shown more fully hereinafter (R. 53).

Upon rehearing there was additional evidence and consideration anew by the Commission upon the important issue as to the nature of the structure of rates through the primary markets. In the report on rehearing, 205 I. C. C. 301, 327–342 (R. 303–321), the Commission fully reviewed the whole subject. It gave the following six reasons for its requirement of the exclusive application of the rate-break combinations:

"The main reasons for the requirement of the exclusive application of the rate-break combinations were that transit balances less than the proportional rates out of the rate-break markets tended to disrupt the rate-break combinations, disorganize the general rate structure, make uncertain in advance the out-bound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates, depress the price of grain at the rate-break markets, and, by direct reflection, at the country points, and reduce the revenues of the carriers." (205 I. C. C., 334, R. 311.)

These reasons were elaborated in the succeeding paragraphs (R. 311–313). "The disruptive effect of transit balances on the rate-break combinations," the Commission explained, "becomes evident when it is remembered that a one-factor through rate takes precedence over any combination of intermediate rates, and that the transit balance incident to such a through rate takes precedence over the proportional rate used in the rate-break combination."

In its original report the Commission found that "The transit balance at primary markets has always been a source of disorganization of rates. * * * Just so long as transit balances remain a substantial factor in the adjustment of rates from the primary markets, just so long will there be undue preferences between out-bound shippers, as well as general instability in rates," and that "a return as closely as practicable" to the com-

bination basis, previously in effect, "would go far toward eliminating much of the complaint that has arisen from time to time concerning the relation of rates through the various primary markets. The best interests not only of the primary markets, but of the producer, consumer, and carrier will be served by the fullest possible application of the rate-break combinations through primary markets" (164 I. C. C. 644–645; R. 52–53).

"The unsettling effect upon the rate-break combinations of one-factor through rates less than those combinations is illustrated by the situation that gave rise to the original proportionals," the Commission said, and it then traced the history of the proportionals, ending with the observation: "Sometimes the out-bound movement is exclusively on transit balances, and the proportional rates become proportionals in name only. The opportunity is then presented to ask for a reduction in the proportional rates down to the basis of the average transit balance" (R. 312).

It then explained the last two reasons, which are of even greater importance:

"The uncertainty in advance as to the out-bound basis of charge arises from the dependence of that charge upon a check of the individual shipper's range of in-bound billing. The out-bound charge will be a transit balance if the in-bound freight bill surrendered covers a shipment from an origin from which there is a one-factor through rate less than the rate-break combination, and will be the higher proportional rate if the in-bound freight bill surrendered covers a shipment from an origin from which there is no such one-factor through rate. Transit balances will vary with the measure both of the through rates and of the in-bound rates to the transit point.

"The advantage to the user of the transit balance over the user of the higher proportional rate is evident, and increases in the ratio of the increase in the storage capacity of the respective cash-grain dealers at the rate-break markets. In other words, the greater the storage capacity the wider the selection of in-

bound billing and proportionately more transit balances" (205 I. C. C., 334–5, R. 311–313).

It was possible to correct the objectionable features of the dual system by prescribing either overhead through rates exclusively, carrying the transit privileges; or rate-break combinations exclusively, under which transit would be granted on the basis of the fixed, constant, unvarying outbound proportional rates; and the question as to the character of the rate system was one of the important issues in the proceeding (R. 47).

"*The primary markets want the rate-break,*" the Commission said (italics ours), and some of them also wanted overhead through rates less than the rate-break combinations in some instances. Kansas City especially advocated "the fullest possible application of its out-bound proportional rates [the distinctive feature of the rate-break combinations], not only as a preserver of Kansas City as a futures market, but as a stimulator of the futures price, and therefore of the directly related cash price paid to the producer." [12] (164 I. C. C., 640; R. 48.) Other shippers and State Commissions favored the rate-break.

After fully reconsidering the question upon rehearing, the Commission affirmed the original finding that *the rate-break combinations must be the exclusive basis of charge on shipments through the rate-break markets* (R. 321).

The exceptions to permit carrier competition as made in the original report, 164 I. C. C., at p. 645 (R. 53), and in the report supplemental thereto, 173 I. C. C. 511, 515 (R. 239–241), were adhered to (205 I. C. C., 342; R. 321).

On page 643 of the original report (R. 51) the Commission made this significant statement: "It is believed that making rates through primary markets exclusively by combination of flat rates to and proportional rates from the markets, would not only preserve, but would substantially increase, carriers'

[12] The price paid to the producer is the price at the primary market minus the freight from the point of production (R. 51).

revenues, even with substantial reductions in both the in-bound flat rates and the out-bound proportionals, because of the discontinuance of transit balances much lower than the proportionals."

This observation foreshadowed the action then taken, which was affirmed on rehearing. The Commission reduced both the in-bound flat rates and the out-bound proportionals, with the requirement that the rate-break combinations composed of such reduced in-bound and out-bound rates should be the exclusive basis of charge, all overhead through rates to the points to which the proportional rates were prescribed to be canceled, to the end that there would be no lower transit balances to cut under the reduced proportional rates ordered. It also aligned the in-bound flat rates and the out-bound proportional rates so that all producing areas, carriers, markets, transit points, gateways, and destinations would have reasonable rates and reasonable rate relations, having due regard to distances and other transportation conditions.[13]

Reduced proportional rates prescribed by the Commission from primary markets were fixed at a level approximating the average of transit balances under reasonable overhead through rates

That this was the Commission's method of determining the levels of the reduced proportional rates is clearly shown by the

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[13] The in-bound flat rates and out-bound proportional rates prescribed by the orders are shown in the appendix to the report on rehearing (proportional rates, R. 490–491; in-bound flat rates, R. 492–524), except that some of the rates there shown were modified in the supplemental report of March 4, 1936 (215 I. C. C. 83, R. 528–584). The prescribed in-bound flat rates to the markets and the prescribed out-bound proportional rates from the markets, added together, form the prescribed rate-break combinations, which constitute the aggregate rail transportation charges from the country origins through the primary markets to important secondary markets and destinations.

For example, the prescribed in-bound flat rate from Beloit, Kans., to Kansas City is 16 cents (shown at p. 497, report 205 I. C. C., R. 502). The prescribed proportional rate from Kansas City to Chicago is 15 cents (shown at p. 486, report 205 I. C. C., R. 490), resulting in a rate-break combination on Kansas City from Beloit to Chicago of 31 cents.

report on rehearing (205 I. C. C. 328, R. 305): "The rate-break combinations on the Missouri River markets from Kansas, Nebraska, and other western States to Chicago and St. Louis were the result of first checking in reasonable through rates from the origin key points to the final markets, over the direct routes through the Missouri River markets, and then breaking them back into in-bound local rates to the latter markets and proportional rates beyond, on the basis of average relative mileages, resulting in proportional rates approximating the average transit balances that would have resulted if one-factor through rates with transit, in lieu of the rate-break combinations, had been prescribed. The rate-break combinations on Minneapolis from North Dakota and other northwestern States to Chicago, over direct routes through Minneapolis, also respond to this test."

Examination of the rate tables in the appendix to the report (205 I. C. C. 486–510, R. 490–524) will show that the prescribed rates, generally speaking, were substantial reductions from the carrier-made rates previously in force. A few of the reductions in typical proportional rates, upon which a large volume of traffic moves, may be mentioned: Kansas City, Omaha, and Sioux City to Chicago, 17.5 to 15 cents. Kansas City to St. Louis, 13.5 to 11 cents. Omaha to St. Louis, 13.5 to 13. Sioux City to St. Louis, 17.5 to 16. Between Omaha and Kansas City, 8 to 6 cents. Between Omaha and Sioux City, 5 to 3 cents. Minneapolis and Duluth to Chicago, 13 to 12 cents.

It is clear appellants wish to retain the benefit of these reduced proportional rates, which represent the averages of transit balances under reasonable through rates, and, in addition, obtain transit balances much lower than the proportionals from such highly important primary markets as Minneapolis, Omaha, and Kansas City to important destinations such as Chicago and St. Louis.

To permit carrier competition, certain exceptions were made to the rule for the exclusive application of the rate-break combinations

The primary markets, as we have seen, are accorded liberal transit privileges under the rate-break combinations. Kansas City and Omaha, for example, can draw in grain over any railroad from Nebraska, Kansas, Oklahoma, Missouri, Iowa, and other grain producing areas, and reship over any route to Minneapolis, Chicago, St. Louis, Memphis, and other points under the reasonable rate-break combinations prescribed by the Commission.

No difficulties or complications would be experienced if all the traffic moved over direct routes not passing through a second primary market. As previously shown, the Commission required the exclusive application of the rate-break combinations on all traffic transited at the rate-break markets. It also required the application of those combinations on traffic moving over routes passing through those markets whether the traffic was transited there or not (cf. 215 I. C. C., 87, R. 535). To illustrate: A shipment from Holdrege, Nebr., to Omaha, there transited, and reshipped to Chicago would take the Omaha rate-break combination: 16.5 cents in, 15 cents out, or a total of 31.5 cents. A continuous shipment from Holdrege to Chicago via Omaha would likewise take the Omaha rate-break combination of 31.5 cents, or a single-factor through rate equal thereto.

If all such traffic moved through to Chicago over the direct routes there would be no need for exceptions to the rule for the exclusive application of the rate-break combinations. There are, however, indirect routes as well as direct routes between these points. Altogether there are 21 rail routes between Omaha and Chicago. (See Commission's answer, R. 670–671.) Most of these routes do not touch Kansas City. This is true of the single-line routes of the Chicago & North Western; Chicago, Burlington & Quincy; Chicago Great Western; Chicago,

Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific; Illinois Central; Wabash. A few of the routes do pass through Kansas City. This is true, for example, of the route formed by the Missouri Pacific and the Santa Fe. The former has a line from Omaha to Kansas City but none to Chicago; the latter has a line from Kansas City to Chicago but does not reach Omaha. Together their lines form a route from Omaha to Chicago via Kansas City, and they desire to participate in the Omaha-Chicago traffic. If the rule for the application of the rate-break combinations were applied without exception, a shipment from Holdrege to Omaha over the Burlington, thence over the Missouri Pacific and the Santa Fe via Kansas City to Chicago would take the prescribed combination on both Omaha and Kansas City of 37.5 cents (16.5 cents Holdrege to Omaha, 6 cents Omaha to Kansas City, 15 cents Kansas City to Chicago), or 6 cents higher than the rate of 31.5 cents over the direct routes from Holdrege to Chicago through Omaha but not Kansas City. Such a competitive disadvantage of 6 cents would preclude the Missouri Pacific, the Santa Fe, and other carriers similarly situated from obtaining any of the traffic.

In its first report the Commission made an exception to the exclusive rate-break method in order to permit carrier competition in these circumstances. It said that its finding requiring the exclusive application of rate-break combinations "is not intended to prevent carrier competition that does not disrupt the basis of making rates by combination on the primary markets." (164 I. C. C., 645, R. 53.) "Thus," the Commission said, "the combination on a given market may be applied as a through rate through another market on which the combination is higher than on the market first mentioned, provided that the shipment is not stopped in transit at the market or other intermediate point on the route over which the higher combination obtains; but if the shipment is stopped at either the market or other intermediate point on the latter route, the higher combination must be applied."

Under this exception to the rule, the combination on Omaha of 31.5 cents could be applied as a through rate over the route through both Omaha and Kansas City, in order to meet the competition of the carriers forming the direct route through Omaha, provided the shipment moved through without stop for transit.

Similarly, the Commission said, "a proportional rate from one market to another may be applied over a competitive route through a third market on which the combination is higher than over the direct route, provided the shipment is continuous, but the higher combination of proportional rates to and from the third market will be applied on shipments stopped there or at any other intermediate point for transit purposes on that route." (164 I. C. C., 645, R. 53.) [14]

In its first supplemental report (173 I. C. C.; R. 240), the Commission stated that "the purpose of the finding is to prevent the defeat of the proportional rate by a transit balance lower than the proportional, but not otherwise to curtail carrier competition." Under the finding the Omaha-Chicago proportional rate of 15 cents, for example, could be applied over an indirect route through Kansas City, *provided the shipment were not stopped for transit at Kansas City.* If it were so stopped, and transit were allowed under the Omaha-Chicago proportional rate of 15 cents, there would be available to the Kansas City operator a transit balance of 9 cents to Chicago—the difference between the 6-cent in-bound rate from Omaha to Kansas City and the rate of 15 cents from Omaha to Chicago applying via Kansas City. Such a transit balance could be used on wheat originating in Kansas (or elsewhere), e. g., Dodge City, with the result that the Kansas City operator could obtain transportation from Dodge City to Chicago at a charge of 29 cents, made up of the in-bound local rate of 20 cents from Dodge City to Kansas City, as prescribed by the Commission

[14] As shown hereinafter, these findings were later modified so as to permit transit at intermediate points other than rate-break points.

(see 205 I. C. C., 497, R. 504), plus the transit balance of 9 cents from Kansas City to Chicago, whereas the rate prescribed by the Commission from Dodge City to Chicago is 35 cents, composed of the local rate of 20 cents to Kansas City plus the proportional rate of 15 cents beyond.

The use by the Kansas City operator of the 9-cent transit balance would thus defeat the prescribed reasonable proportional rate of 15 cents. But if the Omaha-Chicago 15-cent proportional rate is allowed to be applied for *continuous* movement over the routes through Kansas City, *simply in order to permit carrier competition*, there is no possibility of defeating the proportional rate of 15 cents from Kansas City to Chicago by a lower transit balance, and Kansas City is not damaged because the Missouri Pacific and other carriers similarly situated are allowed to participate in the traffic from Omaha to Chicago on a competitive basis with the other carriers serving these points.

In the same report the exception to the rule was broadened to the extent of permitting transit at an intermediate interior point located on *both* a direct route and an indirect route. To illustrate: Fort Dodge, Iowa, is on the direct, single-line route of the Illinois Central from Sioux City to Chicago, which does not pass through Omaha or any other rate-break market. Fort Dodge is also served by the Chicago Great Western and the Minneapolis & St. Louis. The latter roads, in connection with other lines, form routes from Sioux City to Chicago, via Omaha, competitive with the Illinois Central. A typical route would be, Chicago & North Western from Sioux City to Omaha, thence Chicago Great Western to Chicago, passing through Fort Dodge. Under a strict application of the rate-break rule, these latter routes would be compelled to charge a combination of 18 cents from Sioux City to Chicago—3 cents from Sioux City to Omaha plus 15 cents from Omaha to Chicago. Under the original exceptions to the rule to permit carrier competition, these competitive roads

could put in force the Sioux City-Chicago rate of 15 cents over their route, instead of the Omaha rate-break combination, in order that their rate might be the same as that of the Illinois Central. But, if the Illinois Central granted transit at Fort Dodge and the competitive routes failed to meet this action, they would still be under a competitive disadvantage, because the rate over the Illinois Central, with transit at Fort Dodge, would be 15 cents, whereas the rate over the competitive route would be a combination aggregating considerably higher than 15 cents. Therefore the Commission ruled that the competing carriers, with a route through Omaha, desiring to meet the competition of the direct-route carriers, could do so fully, not only by establishing the same competitive rate but also by granting the same transit privileges under that rate as the direct-route carriers granted. (See 173 I. C. C. 516–517; R. 240.) As stated in the Commission's original report (R. 61), transit is a common practice at both market and interior milling points, and it is accorded in connection with both flat and proportional rates. There are many interior milling and elevator points in the territory in question. Such points have always had transit, and no one seriously suggests that it should be taken from them. The combinations of rates which would apply in the absence of transit would be prohibitively high. But the rate-break combinations prescribed by the Commission do not apply to and from these interior points; they apply only on traffic to and from the primary markets. No such combinations of locals in and *proportionals* out are in effect at interior points. Several interior points, including Wichita, Kans., and Des Moines, Iowa, have sought to secure the establishing of proportional rates for application upon the movement of outbound grain traffic, but the Commission has declined to order their establishment.

Lacking such a system of rates, mill and elevator operators at interior points can stop and reship traffic at rates lower

than the local rates in and out only in instances where there is in effect a one-factor rate applicable via the interior point. (In certain instances, they can secure transit on a one-factor through rate not applying over a route via the transit point, but only upon the payment of extra charges for the "out-of-line-haul" from the nearest point on the route to the transit point and back again.)

In all instances where the interior points obtain transit, they pay the local rate to the transit point and the transit balance upon the out-bound shipment. Ordinarily, under that form of transit, the out-bound shipment must move from the transit point over the line of the in-bound carrier, otherwise the higher combination of local rates to and from the transit point, instead of the lower through rate, is applicable (a one-factor through rate is usually lower than any combination of intermediate rates).

Upon petitions for modification, further consideration was given to matter of transit at interior points on routes through rate-break markets

In the report of March 4, 1936, on rehearing, 215 I. C. C., 83 (R. 526–584), the Commission further considered, upon petitions for modification, the question of transit at interior points on routes through rate-break markets (R. 536–542). In these petitions it was urged that the main purpose of the findings in respect of the rate-break combinations—to require the exclusive application of the proportional rates on shipments from the rate-break markets to destinations to which such rates are published—would not be violated by broadening the exception allowing carrier competition so as to permit transit at interior milling and elevator points on a route through an intermediate rate-break market, in order to meet the rate over the competitive route between the same points, *irrespective of whether the interior points on the competitive route are also transit points on the direct route.*

The Commission, after expressing the view that "A modification on the basis suggested would have to rest upon a substantial difference in conditions affecting the interior transit points and the rate-break markets" (215 I. C. C., 90, R. 538), found:

(1) That such a difference in conditions exists;

(2) That the suggested modification would remove discriminations between interior transit points themselves;

(3) That under the suggested modification the transit operator at the rate-break market on the equalized route would not be relatively more affected by transit at interior points on that route than by transit at points on the cheaper routes.

1. Determination as to the existence of difference in conditions affecting the interior transit points and the rate-break markets, the Commission said, required a comparison of the incidents of transit as accorded at the interior transit points and at the rate-break markets. The Commission first considered transit on a one-factor through rate, the only form of transit open to the interior points, and then considered transit under the rate-break combinations, and the difference in the effects of the transit operation under the two bases of through charge. It found that the restrictions on transit under one-factor through rates places a decided limitation upon the freedom of interchange of shipments between carriers serving the interior points, that the transit under the rate-break combinations gives a substantial advantage to the transit operators at the rate-break markets, that transit under one-factor through rates and under the rate-break combinations are two essentially different bases of rates, that under the restrictions of transit under one-factor through rates the volume of grain available to the interior transit operator is not comparable with the volume available to the rate-break market under the unrestricted routing permitted by the rate-break combinations (215 I. C. C., 90–92, R. 538–540).

2. The Commission found that the suggested modification *would remove discriminations between interior transit points themselves.* It referred, as an example of such discrimination,

to that then existing between Hastings, Minn., and Watertown, Wis., resulting from the grant of transit at Watertown and its denial at Hastings, under the proportional rate of 12 cents from Duluth to Chicago. Hastings is 50 miles southeast of Minneapolis on the route of the Chicago, Milwaukee, St. Paul & Pacific from Duluth to Chicago. This route is via Minneapolis; traffic over the route must pass through Minneapolis. For this reason the rate from Duluth to Chicago on grain transited at Hastings was the Minneapolis rate-break combination of 16.5 cents—4.5 cents Duluth to Minneapolis, and 12 cents beyond.

Watertown, Wis., is approximately 46 miles west of Milwaukee. Like Hastings, Minn., it is on the route of the Chicago, Milwaukee, St. Paul & Pacific between Duluth and Chicago. Watertown is also on the route of the Chicago & North Western between Duluth and Chicago, which does not pass through Minneapolis. Because of this latter fact, Watertown was permitted to transit on the Duluth-Chicago 12-cent rate. Both Watertown and Hastings are interior points. Neither is a rate-break point. Neither has the advantages of transit under proportional rates. Under these circumstances, to grant Hastings transit on the 12-cent rate would remove discrimination against it in favor of Watertown (R. 540–541).

3. The Commission further found that under the suggested modification, "the transit operator at the rate-break market on the equalized route would not be relatively more affected by transit at interior transit points on that route than by transit at points on the cheaper route." This may be illustrated by the situation then existing at Rush City, Minn. (See 215 I. C. C., R. 541.)

Nor would the competitive situation of the transit operator at the rate-break market be changed in certain instances in which transit has been accorded at interior transit points on the normal route through the rate-break market, as a result of diversion of the shipments over an available route that barely skirts the outer edge of the rate-break market, in order to escape

the requirement of the exclusive application of the rate-break combination, the Commission found (215 I. C. C., 93, R. 541).

The ultimate conclusion reached by the Commission in respect of the suggested modifications was as follows (215 I. C. C. 93, R. 541): "In view of the foregoing considerations, the previous findings and orders are modified to permit of trans . in the discretion of the carriers, at interior transit points on a route through a rate-break market, as those points are hereinbefore defined, on the basis of a lower rate in effect over a competing route between the same points, in order to equalize those points with transit points on the cheaper route, regardless of whether the interior transit points on the equalized route be also transit points on the cheaper route. On all shipments stopped in transit at the rate-break market on the higher-rated route the rate-break combinations will apply. On shipments not stopped in transit at any point on that route the equalization with the cheaper route may be permitted, in accordance with the previous findings."

Formal complaints of the primary markets

After the issuance of the above-mentioned reports, formal complaints were filed with the Commission by certain interests at primary markets. (See Commission's answer, R. 673-674.) Hearings were held upon these complaints, followed by submission of briefs by complainants and numerous interveners, and oral argument before the Commission. The evidence submitted disclosed the facts in great detail. A certified copy of it (7,061 pages of testimony and 252 exhibits) was introduced below and is here as an original exhibit (R. 709, 766–767).

July 27, 1937, the Commission issued a report, 223 I. C. C. 235 (R. 613–633), finding that the evidence did not justify the issuance of a mandatory order requiring the additional transit sought, but concluding that the carriers should be permitted to file tariffs which would authorize restricted de-

partures from the exclusive application of proportional rates at rate-break markets for a limited period of time (R. 626–627).

The granting of this temporary permission was opposed by various parties. Petitions asking the Commission to reconsider its decision were filed by the State regulatory commissions of Kansas, Montana, and North Dakota, also by various private interests in those States. Certified copies of these petitions, introduced in evidence below, are here as original exhibits (R. 627, 718).

The situation is stated clearly in the petition of the Kansas Commission, which is quoted in part below.[15]

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[15] The purpose of prescribing rates upon the rate-break system was to correct an intolerable situation which had grown up through the manipulation of billing on shipments accorded transit privileges at points from which proportional rates applied. * * *

In prescribing (*Grain and Grain Products, supra*) for exclusive application, fixed proportional rates for the movement of grain and grain products from Kansas City and the other terminal markets, the Commission sought to arrive at a fair average of the out-bound balances which would apply, if transit at through rates were permitted at the terminal markets. It follows, therefore, that in some cases these fixed proportional rates are somewhat higher, and in other cases somewhat lower, than the out-bound balances would have been under transit at through overhead rates. Under the dual system of proportional rates now made possible by the findings and order in these proceedings, the terminal markets will be able to use the proportional rates where such rates are lower, and to use the varying balances where they result in lower charges. To permit such an alternative seems to this petitioner an illogical mixing of the two rate plans and to provide an unfair advantage to the terminal markets.

The fixed proportional rates resulting from the rate-break plan afford marked advantages to the terminal markets from which the fixed proportionals apply. Complainants in these proceedings sought to retain all the advantages of the rate-break plan and ask also that they be relieved of what they considered to be a disadvantage incident to the plan. * * *

If the rates permitted by the modification made July 27 are made available to the Missouri River markets, interior millers and grain dealers will be put to a disadvantage of as much as 6 cents per 100 pounds in reaching Eastern, Southern, and Southeastern markets in competition with the Missouri River points. Under the highly competitive conditions now existing and with the manipulation of billing which would be possible if the terminal markets were granted transit in accordance with the permissive

The affected carriers decided after careful consideration not to establish the additional transit, for the reasons that it would have the result of reestablishing the dual system of rates at the primary markets which had been condemned by the Commission, would make available transit balances lower than the reasonable proportional rates prescribed by the Commission, would greatly reduce the already inadequate revenues of the carriers, and would jeopardize the entire rate structure and the ability of the carriers to perform service to the public required of the transportation agencies. (See reply of defendant carriers dated April 28, 1938, to petitions for reconsideration, here as part of original Ex. No. 12.)

In April 1938 appellants filed petitions asking that the Commission enter a mandatory order requiring the carriers to establish the additional transit in question. The Commission reopened the proceedings, heard further oral argument, and on July 12, 1938, issued a further report, 229 I. C. C. 9 (R. 635–646), finding and concluding that "the present adjustment of rates on grain and grain products throughout the western district does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage" (R. 644). An accompanying order (R. 647), dismissed the complaints.

In October and November 1938 appellants filed petitions for reopening and reconsideration, which were granted. The Commission heard further argument. March 13, 1939, it issued a

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order, the interior points, in many cases, will be effectually barred from Eastern and Southeastern markets.

Over a long period of years the Kansas Commission and the Kansas wheat growers, and, generally, the Kansas grain and milling interests have supported a policy of fostering a strong and flexible grain market at Kansas City and other Missouri River points. That attitude remains unchanged. But in the matters here in issue the Kansas Commission believes that the establishment of the adjustment made possible by the permissive order will give an unfair advantage to such terminal markets and result in substantial and serious damage to the great body of Kansas wheat producers and the grain and milling interests.

further report, 231 I. C. C. 793 (R. 648–654), reaching the conclusion that reconsideration of the record in the light of the last argument did not afford ground for modifying its previous findings (R. 652).

Respecting rate situations set out in appellants' brief

In their brief, at pp. 20–23, appellants set out five rate situations which they say are illustrated by charts introduced by them in the court below (R. 723–728).

The charts are misleading in several respects. They show only a few of the many routes. There is no proof that transit is granted under the rates in question without extra charge at all the interior points on the *indirect* routes shown on these charts. The chart purporting to depict the Iowa-to-St. Louis situation is particularly inaccurate, in that it fails to show the Iowa points as being reached and served competitively by both the Chicago, Burlington & Quincy and the Chicago, Rock Island & Pacific.

In respect of each and every one of the rate situations dealt with in appellants' brief, there is this fundamental fact, not stressed by appellants: Action by competitive carriers whose routes pass through rate-break points to meet the rate of direct routes not passing through a rate-break point. Their complaint does not embrace any other situation.

In respect to the rates. The Commission's orders prescribed proportional rates of 15 cents from Omaha to Chicago, 15 cents from Kansas City to Chicago, 13 cents from Omaha to St. Louis, and 6 cents between Omaha and Kansas City in both directions (R. 490). These rates have since been increased under the Commission's authorization in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41 and 746, as follows: From Omaha and from Kansas City to Chicago to 16 cents; from Omaha to St. Louis to 14 cents; between Omaha and Kansas City to 6.5 cents. The rates shown in appellants' brief are these increased rates.

The rates quoted on page 21 of appellants' brief from Holdredge, Nebr., to Chicago, are clearly erroneous. It is there stated that Kansas City, in order to transit grain from Holdredge and ship it to Chicago, is required to pay a rate of 40 cents. The prescribed rate from Holdrege to Kansas City is 18.5 cents (R. 511), which, added to the prescribed proportional rate of 15 cents from Kansas City to Chicago (R. 490), makes a total of 33.5 cents. The prescribed rate of 18.5 cents from Holdrege to Kansas City has since been increased 5 percent to 19 cents, and the Kansas City-Chicago 15-cent rate has since been increased to 16 cents, making the present combination 35 cents, instead of 40 cents as shown in the appellants' brief.

In respect to appellants' fourth situation, relating to rates from San Antonio to St. Louis: The Commission did not prescribe rates from San Antonio or other points in Texas south of Fort Worth. Its orders require that the rate-break combinations on Kansas City shall be the exclusive basis of charge overall routes to St. Louis from points on and west of the line of the Santa Fe between Arkansas City, Kans., and Fort Worth, Tex. (205 I. C. C. 330; R. 307, affirming the finding in the original report at p. 663, R. 71). Kansas City does not complain of the advantage accruing to it from this adjustment. If the bases of rates applicable from other points not covered by the Commission's order are deemed by Kansas City to be violative of the Interstate Commerce Act, its proper recourse is by complaint to the Commission. Cf. *United States* v. *Merchants Assn.*, 242 U. S. 178, 188.

As to the fifth situation, relating to rates from Centerville, Chariton, and Indianola, Iowa, to St. Louis: All of these Iowa points are served by the Chicago, Burlington & Quincy as well as the Chicago, Rock Island & Pacific. The line of the Burlington runs directly to St. Louis via Keokuk, Iowa. The competitive line of the Rock Island from these Iowa points to St. Louis is via Kansas City. In 205 I. C. C. 301, 496 (R. 503), the Commission prescribed rates of 16.5 cents from Centerville, 19 cents

from Chariton, and 19.5 cents from Indianola, to St. Louis. Under the subsequent increases these rates became 17 cents, 20 cents, and 20 cents, respectively. From these points to Kansas City the Commission prescribed rates of 15 cents from Centerville, 15 cents from Chariton, and 16.5 cents from Indianola (205 I. C. C., 496; R. 504), which, as subsequently increased, became 16 cents, 16 cents, and 17 cents, respectively. From Kansas City to St. Louis the prescribed proportional rate was 11 cents. As subsequently increased, this rate became 12 cents.

This situation appears to be the same in principle as that presented to the Commission by the Kansas City Board of Trade in its complaint in Docket No. 28499, against the Chicago, Rock Island & Pacific Railway, which has been heard and is now pending before the Commission for decision. A certified copy of the complaint in that docket, together with a few pages of the testimony, was introduced below as defendants' Exhibit No. 16 (R. 719–720) and is here as an original exhibit. What the Commission's decision will be cannot, of course, be known in advance.

SUMMARY OF ARGUMENT

Appellants concede that the Commission's orders were made after hearings, do not contend that there was lack of a full hearing, or that there was any irregularity in the proceedings. Issued under the provisions of the Interstate Commerce Act, upon findings of violations of that Act, the orders were within the Commission's authority, and there is no contention to the contrary. Nor do appellants allege that the numerous findings of fact in the Commission's reports were made without evidence. Being thus unchallenged, these findings of fact may be accepted as fully supported by substantial evidence. Notwithstanding the Commission's finding to the contrary, thus conceded to be supported by substantial evidence, appellants contend that the rates and practices in question are unreasonable and unduly discriminatory or prejudicial, in violation of sections 1, 2, and 3 of the Act. Their principal argument seeks

to support this contention. But, obviously, to sustain the contention, the Court must review and weigh the evidence and make independent findings upon these questions, which are clearly administrative in character. It is established by numerous decisions of this Court, so thoroughly as to leave little room for doubt, that such questions are questions of fact, for determination by the administrative tribunal, and not questions of law for the Court either as an original matter or upon review. Appellants' principal argument, therefore, which assumes erroneously that this Court will perform the administrative function of determining whether the rates and practices complained of are unreasonable or unduly discriminatory, must be rejected.

Appellants argue that there was an obvious discrimination, that there was no room for the exercise of administrative judgment, that therefore the Commission erred as a matter of law in finding negatively that there was no undue discrimination or prejudice in violation of the Act. The argument is unsound because it assumes its factual basis, because it disregards numerous relevant facts and circumstances found by the Commission which formed the basis of its conclusion and decision both in the *Grain* cases proper and in the subsequent formal complaint proceedings, and because it assumes that if the respective transportation and transit services and the costs thereof are the same, the conclusion must follow, regardless of all other relevant circumstances and conditions, that unlawful discrimination exists.

Under sections 2 and 3 an alleged preference is not "undue" or "unreasonable" except in instances where the circumstances and conditions are substantially similar. The Commission's conclusion that there is no unjust discrimination and no unreasonable or undue preference or prejudice is based, among other things, upon a finding of substantial differences in conditions affecting the transit at interior points and at the primary rate-break points, the Commission having found that there is a difference in the rate bases applying when transit

is taken at the respective points, that there is a difference in the form of transit, and that there is a difference in advantages resulting from the different rate bases and different forms of transit.

Appellants, conceding that the Commission found many differences, argue that such differences are insufficient in law, but this argument, when based on such a concession, seems but to ask the Court to consider the facts for the purpose of determining the question of fact, not of law, whether the alleged preference is unjust or undue and therefore unlawful. It is clear that such a determination calls for the exercise of an administrative rather than a judicial function.

While the Commission's order is subject to review, the range of issues open to review is narrow. "Only questions affecting constitutional power, statutory authority, and the basic prerequisite of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestible."—*Rochester Tel. Corp.* v. *U. S.*, 307 U. S. 125, 139.

Appellants, in relying upon an expression in an earlier report that was later modified, again ask the Court to reach an independent judgment upon a matter purely adminstrative.

In deciding the formal complaints the Commission properly gave consideration to the matters, among others, that to grant the transit sought (1) would reestablish the dual system of rates through the primary markets, found by the Commission to be objectionable and unlawful, (2) provide transit balances from the primary markets lower than the prescribed proportional rates, (3) destroy the prescribed relation of rates in the Western District. Appellants argue that these considerations are insufficient in law and in fact to support the order denying relief. These are not the only grounds upon which the order rests. They were, however, properly considered, inasmuch as they go to support the conclusions reached.

In finding, upon a review of all the relevant facts and circumstances shown of record, that the alleged discrimination or prejudice was not unjust or undue, the Commission con-

sidered only pertinent matters properly to be considered in rate regulation. The Commission properly considered the question whether to grant relief would reestablish the dual system of rates from the primary markets, disturb and disrupt the rate-break structure, and reduce the revenues of the carriers. These are all transportation conditions. Having found that the rate-break system would serve the best interests not only of the primary markets but of the producers, consumers, and carriers, and having carefully worked out a reasonable and nonprejudicial rate structure based upon this principle, with carefully graded inbound rates and sensitively related proportional rates from each of the primary markets, so as to accord to all concerned not only reasonable rates but properly related rates, it was within the Commission's power to prevent the reestablishment of the unlawful dual system which would disturb and disrupt this structure and reduce the revenues of the carriers. *Youngstown Sheet & Tube Co. v. United States*, 295 U. S. 476; *I. C. C. v. C., R. I. & P. Ry. Co.*, 218 U. S. 88, 103; *Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co.*, 257 U. S. 563, 585.

The orders in question do not neutralize or offset natural advantages of the primary markets. Appellants' claim that the benefits flowing to the primary markets from the rate-break system are due to natural advantages of location is untenable, since it overlooks that the rate-break is merely a form of rates and that whether the rates shall be in this form or some other such as overhead through rates is within the administrative discretion of the Commission. Here, the Commission ordered the rate-break system, finding it warranted by the record in the interest of market, carrier, and producer, but warned that if it should fail, a system of overhead rates through the markets would be a possible alternative. In any event no natural advantages entitle these markets to both rate-break combinations and overhead through rates with transit balances lower than the out-bound components of the rate-break combinations—the proportional

rates—to the same destinations. The primary markets are not entitled as a matter of law to such a dual system of rates. The Commission condemned that system as unduly prejudicial and otherwise unlawful, prescribed the rate-break system to take its place, revised the in-bound local rates and outbound proportionals to a reduced basis in consideration of the elimination of the lower transit balances, and fixed the proportional rates at the approximate average of transit balances that would have resulted had reasonable overhead through rates been prescribed instead of rate-break combinations. There are no natural advantages that entitle the primary markets to these proportional rates, determined and fixed in this manner, and also to certain lower transit balances.

The legal effect of the challenged orders is the same as if supported by all members of the Commission.

The Commission's orders, granting to the primary markets all the advantages of transit under the rate-break system, do not subject them to legal damage by denying to them the further advantage of additional transit under competitive overhead rates.

The relief sought—annulment of only part of the general adjustment prescribed by the Commission—should be denied because to grant it would require the exercise of the administrative function of *revising* the adjustment. The prayer of the bill is in the alternative and asks that the Court enjoin the Commission's orders insofar as they require or permit a basis of transit at the primary markets different from that at interior points. The prayer, if granted, could be complied with (1) by withdrawing the transit from the interior points; (2) by extending it to the primary markets. It seems clear appellants would not want the first alternative adopted. Moreover, it appears that it could not be adopted lawfully, since the Commission found that the withdrawal of this transit from the interior points on indirect routes would result in undue prejudice against such points and undue preference of

other interior points on direct routes. What appellants seek in this suit is the extension of the transit to the primary markets. In substance, they ask the Court to compel the Commission to issue a mandatory order to the carriers requiring that they grant such transit at the primary markets. The result would be that the primary markets would obtain highly important transit balances which would carry a huge volume of grain, at levels substantially lower than the reduced reasonable proportional rates prescribed by the Commission. The bill does not ask that the prescribed proportional rates be enjoined. Appellants wish to retain these proportional rates and in addition secure the reestablishment of lower transit balances. But it is obvious from the Commission's reports that the reduced in-bound rates and the reduced out-bound proportional rates would not have been prescribed without the requirement that the transit balances be eliminated. Thus, clearly, the appellants, in not attacking the prescribed rate structure as a whole but in seeking to eliminate an integral part of it, in effect ask the Court to revise the prescribed adjustment. The order is not segregable in this respect. This Court has repeatedly held that it will not revise a rate adjustment ordered by an administrative body acting within the scope of its authority. *Northern Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 599; *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38, 51. The relief sought should be denied on the ground that to grant it would require the Court to perform administrative functions.

ARGUMENT

I

Appellants' principal argument assumes, erroneously, that this court will perform the administrative function of determining whether the rates and practices complained of are unreasonable or unjustly discriminatory

Appellants' bill concedes that the Commission's orders were made after hearings, contains no charge that there was lack of

a full hearing, or that there was any irregularity in the proceedings. Issued under the authority of section 15 (1) of the Interstate Commerce Act, upon findings of unreasonableness in violation of section 1 and undue preference and prejudice in violation of section 3, the orders are of such a nature as the Commission is clearly authorized to make, and there is no contention to the contrary. Nor do appellants allege in their bill or elsewhere that the numerous findings of fact expressed in the several reports of the Commission were made without evidence. Being this unchallenged, these findings of fact may be accepted as fully supported by substantial evidence.[16]

Notwithstanding the Commission's findings to the contrary, thus conceded to be supported by substantial evidence, appellants contend that the rates and practices in question are unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of sections 1, 2, and 3 of the Interstate Commerce Act. (See appellants' statement of points, R. 768, and specification of errors, brief, p. 26.)

While appellants' brief raises several questions of law within the scope of judicial review of administrative orders, its principal argument is based upon the above contention and assumes, erroneously, that the Court will review and weigh the evidence and find independently that the rates and practices complained of are unreasonable and unjustly discriminatory.

It is so thoroughly established that such questions are questions, not of law, but administrative questions of fact for determination by the administrative body, that citation of authority is hardly necessary. "The finding of unreasonable-

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[16] "It is settled that any finding of fact by the Commission if supported by evidence is final and conclusive on the courts." *Keller* v. *Potomac Elec. Power Co.*, 261 U. S. 428, 442, citing *I. C. C.* v. *Union Pac. R. Co.*, 222 U. S. 541, 547. The validity of the orders is to be tested, therefore, upon the facts appearing upon the face of the Commission's reports.

While certified copy of the evidence in the formal complaint cases is before this Court as an original exhibit, it is unnecessary under the circumstances to resort to it to ascertain the facts. The evidence in the *Grain* cases proper (filling about 149 volumes), is not here.

ness, like that of undue prejudice, is a determination of a fact by a tribunal 'informed by experience.' *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454."—*Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 665–666.

"This section [3] forbids any undue or unreasonable preference or advantage in favor of any person * * * or locality; what is such undue or unreasonable preference or advantage is a question not of law, but of fact. *Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219; *Interstate Commerce Commission* v. *Alabama Midland Railway*, 168 U. S. 144, 170."—*Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361.

"It is not any and every discrimination, preference, and prejudice that are denounced by the Commerce Act. Section 3 * * * renders unlawful any '*undue or unreasonable*' preference or advantage, prejudice, or disadvantage. * * * And in the first paragraph of amended Section 15 * * * it is rates, regulations, or practices that in the opinion of the Commission are '*unjustly* discriminatory, or *unduly* preferential or prejudicial,' etc., to which the prohibition is to be applied. Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission * * *, and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power."—*Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481.

"Every rate which gives preference or advantage to certain persons, commodities, localities, or traffic is discriminatory. For such preference prevents absolute equality of treatment among all shippers or all travelers. But discrimination is not necessarily unlawful. The Act to Regulate Commerce prohibits (by sections 2 and 3) only that discrimination which is

unreasonable, undue, or unjust. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219, 220; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481. Whether a preference or discrimination is undue, unreasonable, or unjust is ordinarily left to the Commission for decision; and the determination is to be made, as a question of fact, on the matters proved in the particular case."—*Nashville Ry.* v. *Tennessee*, 262 U. S. 318, 322.

"* * * And the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the *Illinois Central* and other cases, *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action."—*United States* v. *Louis. & Nash. R. R.*, 235 U. S. 314, 320–321.

Adherence to the principle, without modification, is disclosed by the decision in *United States* v. *Trucking Co.*, 310 U. S. 344, 352–353:

> "It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed." And where a court substituted "its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so [the court], obviously exerted an authority not conferred upon it by the stat-

> ute." [Citing *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320.] * * * The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue," "unjust," "unfair," and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination, by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages, and discrimination. [Citing *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 304; *Interstate Commerce Commission* v. *D., L. & W. R. Co.*, 220 U. S. 235, 255; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481; *Texas & Pacific Ry. Co.* v. *I. C. C.*, 162 U. S. 197.]

Cf. *Gt. No. Ry.* v. *Merchants Elev. Co.*, 259 U. S. 285, 291; *Chicago, R. I. & P. Ry.* v. *United States*, 274 U. S. 29, 33–34; *I. C. C.* v. *Ill. Cent. R. R.*, 215 U. S. 452, 470; *Los Angeles Switching Case*, 234 U. S. 294, 314; *I. C. C.* v. *L. & N. R. R. Co.* 227 U. S. 88, 100; *Seaboard Air Line Ry.* v. *United States*, 254 U. S. 57; *Penna. R. R.* v. *Puritan Coal Co.*, 237 U. S. 121, 131; *Keller* v. *Potomac Elec. Co.*, 261 U. S. 428, 444; *Radio Comm.* v. *General Elec. Co.*, 281 U. S. 464, 469.

The cases relied upon by appellants in support of their contention that this Court will determine independently whether the rates and practices here involved are unreasonable or unduly discriminatory, *Mitchell* v. *United States*, 313 U. S. 80; *I. C. C.* v. *Union Pac. R. R.*, 222 U. S. 541; *Sou. Pac. Co.* v. *I. C. C.*, 219 U. S. 433; *Ann Arbor R. Co.* v. *United States*, 281 U. S. 638; *Tex. & Pac. R. R. Co.* v. *United States*, 289 U. S. 627; *Alton R. Co.* v. *U. S.*, 287 U. S. 229, are inapposite, for they all turned on questions of law. In none of those cases was the Court called upon, as here, to perform the purely administrative function of determining independently the question

whether certain rates were unreasonable or unjustly discriminatory. Here appellants ask the Court to disregard many elements which the Commission deemed relevant and, upon consideration of only a few facts alleged to be controlling, to reach an independent conclusion of fact contrary to that reached by the fact-finding body.

II

The Commission's conclusion that the grant of transit at the interior points and its denial at the primary markets under the particular competitive rates in question does not result in unjust discrimination or undue prejudice is based upon findings of substantial differences in the rate bases and rules and regulations governing transit, and other differences in relevant circumstances and conditions

Appellants' principal argument, in substance, is this: Under the proportional rates prescribed by the orders for application from the primary markets, transit is permitted at all intermediate points on the route except a primary market. Denial of the transit at the intermediate primary market results in a higher rate than that applicable when transit is taken at an intermediate interior point. The transportation and transit service and the cost thereof is the same whether transit is taken at an intermediate interior point or at an intermediate primary market. There is, therefore, an obvious discrimination, in violation of sections 2 and 3 of the Interstate Commerce Act, and there is no room for the exercise of administrative judgment. The Commission therefore erred as a matter of law in finding that this inequality was not unjustly discriminatory and unduly prejudicial in violation of sections 2 and 3 of the Act.

The argument is unsound, we submit, because it assumes its factual basis, since there was no finding by the Commission that the transportation and transit service and the cost thereof is the same at the respective points; because it disre-

gards numerous relevant facts and circumstances found by the Commission which formed the basis of its conclusion and decision both in the *Grain* cases proper and in the subsequent formal complaint proceedings; and because it assumes that if the respective transportation and transit services and the costs thereof are the same, the conclusion must follow, regardless of all other relevant circumstances and conditions, that unlawful discrimination exists.

Under the provisions of section 2 an alleged inequality in transportation services performed for different persons is not unlawful unless the circumstances and conditions affecting the respective services are substantially similar. Under section 3 an alleged prejudice and preference, to come within the prohibition, must be "undue" or "unreasonable." While section 3 does not contain the words of section 2 "under substantially similar circumstances and conditions," it is the settled interpretation of section 3 that an alleged preference cannot be found to be *undue* unless the respective circumstances and conditions are substantially similar.[17]

The Commission's conclusion and decision that there is no unjust discrimination and no unreasonable or undue preference or prejudice in the situation here complained of is based, among other things, upon a finding of substantial differences in conditions affecting the interior transit points and the primary rate-

[17] This is clearly expressed by Commissioner Clements in *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C. 154, 167–168: "* * * the third section of the Act forbids the giving of undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality; and while this section does not carry the phrase employed in section 2, 'under substantially similar circumstances and conditions,' * * * nevertheless, it contains words of wider scope, 'in any respect whatsoever;' and, as a matter of practical application, the thought, if not the words, 'under substantially similar circumstances and conditions,' must be present to the mind in considering under section 3 what preferences or advantages are due or reasonable, or are undue or unreasonable." In *Clover Splint Coal Co. v. Louisville & N. R. Co.*, 197 I. C. C. 276 (1933), the Commission, after quoting from the earlier case, held that "It is now well settled that sufficient dissimilarity of circumstances and conditions will prevent what would otherwise be a violation of the statute."

break points (R. 538–541). The Commission found (1) that there is a difference in the rate bases applying when transit is taken at the respective points; (2) that there is a difference in the form of transit; (3) that there is a difference in advantages resulting from the different rate bases and different forms of transit.

1. Difference in rate bases

While, for the purpose of according to shippers a lower basis of rates under transit than would otherwise apply, the in-bound and out-bound movements are viewed as continuous through movements, this is only a fiction, and as a matter of fact, they are separate and distinct shipments. This is true in respect of shipments to and from both primary markets and interior points. There is nothing that requires like bases of rates upon the separate out-bound shipments from these respective transit points. It is a fact that the basis of rates upon the out-bound shipments from the primary markets is different from that applying upon the out-bound shipments from the interior points.

Under the transit practice the operator draws in his grain from various points of origin, paying for this transportation service the lawfully published tariff rates from the respective points of origin to the transit point. In this respect the practice is the same at the primary markets and at the interior points. Then, if the transit rules and regulations are complied with, the operator at either point may obtain a reduced basis of rate upon the out-bound shipments. Under the rate-break system, the reduced rate basis is in the form of the out-bound proportional rate. But the rate-break system applies only at the primary markets; in no instance does it apply at an interior point. These interior points are not rate-break points. The rates applying to and from or through these points are in no instance a combination of local rates in and proportional rates out. Those points transit, if at all, under overhead through rates. Therefore, they pay, upon their out-bound shipments, the *transit balance*, whatever it may be. Since this transit

balance is the difference between the in-bound rate and the overhead through rate, it varies, because the in-bound rates from various points of origin to the transit point vary, and the overhead through rates vary. In no instance are the transit balances from the interior points averaged and fixed as a constant factor. In some instances, therefore, operators at interior points will obtain a low transit balance, and in other instances they will pay a high transit balance. At the primary markets, transit on overhead through rates is forbidden. Transit may be taken there only at the out-bound proportional rates, which are fixed and constant, representing in each instance the approximate average of transit balances under reasonable overhead through rates determined (but not prescribed) by the Commission, the Commission having required this basis in order to remove the objectionable and unlawful features of the dual system of rates previously existing.

While, therefore, the out-bound basis of charge upon grain transited at the primary markets is a fixed, constant, *averaged* factor in the form of a proportional rate, the out-bound basis of charge upon traffic transited at the interior points is fundamentally different, being the transit balance, which will vary depending upon the point of origin, the in-bound rate therefrom to the transit point, and the overhead through rate.

2. Difference in form of transit

In the supplemental report on rehearing (215 I. C. C. 83; R. 526–584), modifying previous findings so as to authorize transit at an intermediate interior point on a route through a rate-break market, the Commission pointed out the differences between transit under overhead-through rates—the only form of transit available to the interior points—and transit under the rate-break combinations available at the primary markets (R. 538–540). It there found that transit under an overhead or one-factor through rate "permits of the drawing of grain into the transit point, and of the later out-bound shipment of an equivalent tonnage of that kind of grain or

its products, on the basis of the 1-factor through rate from the origin of the grain to the final transit destination. The local rate on the in-bound shipment to the transit point is first paid, and the freight bill covering that shipment is recorded with the transit bureau, as evidence of intention of further transportation of the in-bound grain (or its equivalent in tonnage) or its products. When the out-bound shipment is tendered the in-bound freight bill is surrendered as authority for the charging on the out-bound shipment (in lieu of the local rate from the transit point that would otherwise apply) of the difference between the in-bound local rate and the 1-factor through rate (the transit balance) from the origin of the grain to the final destination" (R. 538).

"The foregoing," the Commission explained "are the mechanics of transit also under the rate-break combination, except that the out-bound shipment under that combination is on a definitely published constant factor, instead of on the unpublished and varying difference between the 1-factor rates to the transit point and to final destination" (R. 538).

"But there is a *substantial difference* in the effects of the transit operation under the two bases of through charge, due to the inherent difference in the character of the 1-factor through rates with transit and the rate-break combinations (R. 538). [Italics ours.]

"Transit under 1-factor through rates is usually confined to points situated on reasonably direct routes, because the publication of 1-factor through rates is ordinarily so confined. In the absence of carrier competition the basis of charge for shipments over markedly circuitous routes is frequently the rate over the direct route plus an out-of-line charge, or is the combination of locals. Also the out-bound shipment from the transit point is usually held to the rails of the in-bound carrier, when the 1-factor through rate is over one line, and to the rails of the carrier participating with the in-bound carrier in a joint rate via the transit point, when the transportation is over more than one line. Thus transit places a decided limitation

upon the freedom of interchange of shipments between carriers out of a transit point well served by carrier facilities (R. 538–539).

"The through rates resulting from the rate-break combinations are affected by no such restrictions, either as to circuity of routes or choice of out-bound carrier, because the proportional rate becomes applicable upon the surrender of a freight bill covering the required amount of in-bound tonnage from any origin, and because the proportional rates are applicable over all lines from the markets to all destinations to which published. Through rates less than the combinations of locals on the rate-break markets are therefore available to transit operators at those markets on all shipments to all destinations to which the proportional rates are published, from all origins, and over all routes through those markets, no matter how circuitous. That this is of substantial advantage to the transit operators at the rate-break markets over the transit operators at the interior transit points is well illustrated in *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co.*, 24 I. C. C. 552, 554–555 (R. 539).

"Commercially, the proportional rate, when applied on the bulk of the traffic out of the market, is of especial benefit to the price-registering markets, such as Chicago, Minneapolis, and Kansas City, as a price stabilizer, because the known equality of out-bound charges enables grain dealers there to compete on an equality in the purchase of grain at country origins. The importance of the proportional rate in this respect is diminished when the lower transit balances become so numerous as to be applied on a substantial volume of the out-bound movement, and the uncertainty as to the out-bound charge among competing dealers is correspondingly increased. One-factor through rates with transit would exercise no such stabilizing influence on prices unless one transit balance become so universally used as to be recognized as the so-called 'going balance,' paid by all dealers on the bulk of their shipments, and on which their country grain purchases

were generally based. Under 1-factor through rates with transit and varying transit balances, and with frequent crop shortages in accustomed sources of supply, and other untoward conditions, the availability of such a constant balance is usually not assured. Under the exclusive application of the rate-break combinations the proportional rate as the one out-bound basis of charge from the rate-break market is always assured, together with an adequate supply of in-bound billing at all times for surrender in connection with the out-bound shipment under that rate (R. 539–540).

"Transit and the rate-break combinations are two essentially different bases of rates, and one should not be permitted to interfere with the other. Transit at the interior transit points does not interfere with the rate-break combinations, but the rate-break combinations do interfere with transit at the interior transit points, because of the incidental passing of the shipment through a rate-break market on the route sought to be equalized with a cheaper route. This is the situation, despite the fact that the construction of the through charge over that route on the basis of the rate-break combination, in lieu of the 1-factor through rate with transit (under which latter basis transit would usually be given at both the rate-break market and the interior transit point in order to equalize with a cheaper route), is neither at the request of, nor of primary interest to, the interior transit points. [R. 540.]

"While it is true that under the rate-break combinations the transit operator located between the country origins of the grain and the first rate-break market has the same choice of out-bound carrier from the market as the transit operator at the market, the volume of grain available to him for transportation under the flat rates into the market, under the restricted routing requirements of transit, is not comparable with the volume of grain available to the rate-break market, under the unrestricted routing permitted by the rate-break combinations. The situation is substantially the same as to the volume of country grain available to the transit operator located be-

yond the first rate-break market. Millers located there usually purchase their grain largely at the first market which is in position to furnish the desired kind of grain, by reason of the general concentration, mixing, and grading of grains incident to the operation of the rate-break market, the direct benefits of which accrue to the grain dealers at the market." (R. 540.)

3. Difference in advantages

In its report of October 22, 1934, the Commission found that the very fact of the existence of the proportional rates given the primary markets *a decided advantage* over the interior transit points, from which no proportional rates apply. This finding appears in the report under the heading "Proportional Rate Advantages" (R. 319–320):

"In connection with the requests for exceptions to the rule for the exclusive application of the rate-break combinations, consideration should be given to an important advantage of the rate-break combination over the one-factor through rate with transit. The proportional rate is applicable over all out-bound lines upon surrender of an in-bound freight bill covering an in-bound shipment by rail, whether the transportation through the rate-break market is over a reasonably direct route or not. It is the equivalent in all respects, and more, of a local rate. In substance it is a special local rate from the rate-break market, with no intermediate application as maximum, and with no requirement of fourth-section relief for the failure of that application, because of the fiction of its status as a part of a through rate. It is designed for the final gathering in by the rate-break market, for through transportation at less than the combinations of local rates that would otherwise apply, of grain not procurable under one-factor through rates less than the rate-break combinations (and resulting transit balances less than the proportional), because of the limitations on out-of-line and back-haul movement incident to the usual application of the one-factor through rates only over reasonably direct routes, and because of the further usual requirement of out-bound

shipment from the transit point over the rails of the in-bound carrier.

"The proportional rates therefore open up to the rate-break markets the widest possible range of originating and distributing territory and afford, together with the larger number of carriers usually found converging in-bound to and radiating out-bound from the rate-break market, in the direction of the normal flow of grain traffic, a decided advantage to that market over the interior transit point."

Thus, the Commission found substantial differences, and in view of these and other important differences in the circumstances and conditions surrounding transit at the primary markets and transit at the interior points, and the resulting differences in the *bases of rates* as applied upon the entire traffic through the respective points, found that there was no unjust or undue discrimination.

It found that "the rate-break markets and interior transit points on all routes are merely accorded the benefit of their respective forms of transit, each without interference from the other"; that "the present adjustment of rates on grain and grain products throughout the Western District does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage * * *." (229 I. C. C. 9; R. 644.)

Appellants' brief concedes that the Commission found many differences, but argues that such differences "are insufficient as a matter of law to constitute a lawful basis or justification" for the orders. This argument, when based on such a concession, seems but to ask the Court to consider the facts for the purpose of determining, not a question of law, but the question of fact whether the alleged preference is unjust or undue and therefore unlawful. But it is clear that such a determination calls for the exercise of an administrative, not a judicial, function. The Commission's order is, of course, subject to review but "the range of issues open to review is

narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Comm.* v. *Illinois Central R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Comm.* v. *Union Pacific R. Co.*, 222 U. S. 541."—*Rochester Tel. Corp.* v. *U. S.*, 307 U. S. 125, 139–140.

(a) The statement in the first supplemental report, 173 I. C. C., that restriction was laid on the intermediate points in order not to discriminate against the market, must be deemed withdrawn in view of the subsequent modification

In ruling, in its report in 173 I. C. C., 515–516 (R. 239–241) that carriers whose lines formed a route passing through an intermediate rate-break market might apply over their route a rate-break combination on another market, in order to meet carrier competition, provided that transit was not taken either at the intermediate market or any other point on the route passing through the intermediate market, the Commission said the restriction "is laid on the intermediate points other than the market, as well as upon the market, in order not to discriminate against the market in favor of the other intermediate points." As we have seen, this was modified in subsequent reports so as to permit transit at intermediate interior points on indirect routes, upon findings that otherwise there would be undue prejudice against such points in favor of interior points on direct routes and that there would be no undue prejudice against the intermediate primary markets.

In its report in 223 I. C. C. 235, at p. 245 (R. 625–626), the Commission said:

> No extensive rate structure can be made perfect nor can any rate structure be made permanent in any real sense in a changing world. To meet demonstrated difficulties and to overcome prejudicial features which early experience under the new rates had developed in several localities, we have heretofore modified the rates originally prescribed in the second *Grain case* in a number

of particulars. For example, in *Wheat Products from Twin Cities to Chicago, supra,* we authorized transit at Minneapolis on wheat drawn from or through Duluth. In the second report in the *Grain case,* 215 I. C. C. 83, at page 95 [R. 543–545], we ordered canceled proportional rates between Chicago, Peoria, and St. Louis, because the rate-break combinations were unduly burdensome to industries at such points and were therefore unworkable. In the same report, pages 88 to 93, inclusive, we modified our previous finding as to transit at interior points such as Rush City and Hastings, Minn., on routes through rate-break markets, in order to aid such points to operate in competition with points on lower-rated routes. This was a modification of our previous finding in the first *Grain case,* 173 I. C. C. 511, page 516, on the same subject. We there said that the restriction under which interior transit points on routes through rate-break markets were held to the same basis of rates as the markets on the same routes was laid on the intermediate points as well as upon the markets, in order not to discriminate against the markets in favor of the intermediate points, and that the fact that the markets may draw grain from a wider territory than the intermediate points hardly afforded justification for a difference in treatment. Complainants say that this is a correct statement of fact and of law, and that, conversely, our modification thereof is erroneous in both these respects. A return to our first view would, however, be a hardship upon the milling industry at many intermediate points, with little or no benefit to the markets, which would still be at a disadvantage in competing with other rate-break markets and interior points on lower-rated routes.

Notwithstanding the subsequent modification and the express holding of the absence of unlawful discrimination in these circumstances, appellants in their brief reiterate time and again

the statement in the earlier report that the restriction was laid against the interior points as well as the rate-break points in order not to discriminate against the latter. But, in view of the subsequent reports, it must be deemed that the expression in the earlier report was withdrawn. In *New England Divisions Case*, 261 U. S. 184, 203, the Supreme Court, speaking of a similar contention, said:

> The contention * * * rests largely * * * upon expression in the first report of the Commission, which, in view of the second report and order thereon, must be deemed to have been withdrawn.

Hence, there is no finding by the Commission of unjust discrimination against the primary markets. The earlier expression was withdrawn in the subsequent report; and when the Commission ruled upon the specific question as put in issue in the formal complaints of the primary markets, it expressly found "that the present adjustment of rates on grain and grain products throughout the western district does not subject the rate-break markets on indirect routes to undue prejudice and disadvantage and give to points on the same or other routes an undue preference and advantage * * *." (229 I. C. C. 9, 16; R. 644.) In view of these indisputable facts, appellants cannot by numerous repetitions reinstate the earlier expression. The repetition would seem to invite the Court to conclude that the earlier statement was right. But, as stated in *Mfgrs. Ry. Co.* v. *United States*, 246 U. S. 457, 482, after pointing out that it might be conceded that the evidence before the Commission in that case would have warranted a different finding:

> * * * indeed, the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this cannot be done. *United States* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320; *Penna. Co.* v. *U. S.*, 236 U. S. 351, 361.

And, as in *Los Angeles Switching Case*, 234 U. S. 294, 314:

> The argument for the petitioners necessarily invites the Court to substitute its judgment for that of the Commission upon matters of fact within the Commission's province. This is not the function of the Court.

III

In deciding the formal complaints the Commission properly gave consideration to the facts, among others, that to grant the transit sought (1) would reestablish the dual system of rates through the primary markets; (2) provide transit balances from the primary markets lower than the prescribed proportional rates; (3) destroy the prescribed relation of rates in the Western District

In their brief, section III, pages 83, 85, appellants argue that these considerations are insufficient in law and in fact to support the order denying relief. These are not the only grounds upon which the order rests. We submit, however, that they were properly considered, inasmuch as they go to support the conclusions reached. These conclusions were expressed in the last report, 231 I. C. C. 793, 795 (R. 650–651):

> * * * to grant the requests for transit under proportional rates from the rate-break markets would be to reestablish the so-called dual system of rates. That system has been condemned in these proceedings upon five previous occasions. It would give the rate-break markets, Kansas City and Omaha, the privilege of using a 9.5-cent transit balance to defeat the present 16-cent proportional rate to Chicago, as well as to destroy the present relation required in rates from origins in the western district.[18]

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[18] At the time that report was written, March 13, 1939, the general increases authorized by the Commission in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41, 746, had become effective, and the proportional rate of 15 cents from Omaha and Kansas City to Chicago had become 16 cents. The proportional

1. *It would reestablish the dual system of rates at the primary markets.* As previously shown, the Commission prescribed a proportional rate of 15 cents from both Omaha and Kansas City (also from Sioux City) to Chicago. The rate previously applicable from these points to Chicago was 17.5 cents.

The proportional rate of 15 cents was prescribed as the outbound component of the rate-break combinations on Missouri River markets from Kansas, Nebraska, and other western States to Chicago. These rate-break combinations were arrived at, the Commission explained (205 I. C. C., p. 328; R. 305), by first determining reasonable through rates from the origin key points to Chicago over the direct routes through the Missouri River markets, and then dividing them or "breaking them back" into in-bound local rates to the latter markets and proportional rates beyond on the basis of average relative mileages. This resulted in a proportional rate from the Missouri River markets to Chicago "approximating the average transit balances that would have resulted if one-factor through rates with transit, in lieu of the rate-break combination, had been prescribed."

These proportional rates were prescribed as the exclusive basis of charge. Overhead through rates via the markets with resulting transit balances from the markets were required to be canceled, to the end that there would be no transit balances that could be used to defeat the reduced proportional rates. *But to permit carrier competition*, certain overhead through rates, including proportional rates from one market to another through an intervening third market, were permitted to be applied via particular routes which pass through such intermediate markets, provided the shipments *merely pass through*. The shipments were not permitted to be stopped there for transit and reshipped at a transit bal-

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rate between Omaha and Kansas City had become 6.5 cents, so that if transit under the 16-cent rate from Omaha to Chicago were permitted at Kansas City, the transit balance would be 9.5 cents.

ance, for that would defeat the prescribed proportional rates. If they were not stopped for transit, there would be no defeat of the proportional rate from the intermediate market, and the situation would be the same as if the shipment moved either over a route far removed from the intermediate market or over a route that happened to skirt the market without actually passing through it.

Appellants insisted before the Commission that wherever a rate is applied via an intermediate market, even though it is permitted to be applied over a route passing through such market only in order to meet carrier competition, the intermediate market should be allowed to transit on such rate, but it is indisputable that wherever this is done, it results in transit balances lower than the proportional rate from the intermediate market. In the case of Kansas City it would result in a transit balance of 9 cents to Chicago if Kansas City were permitted to transit on the prescribed proportional rate of 15 cents from Omaha to Chicago, since the in-bound rate to Kansas City would be 6 cents. In the case of Omaha it would likewise result in a transit balance of 9 cents to Chicago if Omaha transited on the 15-cent proportional rate from Kansas City to Chicago, since the rate from Kansas City to Omaha is also 6 cents. In all such instances there would be a transit balance lower than the prescribed proportional rate. As found in the report of July 12, 1938, 229 I. C. C. 9, 15 (R. 643):

> The additional transits definitely listed in the petitions for an affirmative order would, if permitted, cover the main body of rates on grain and grain products through the several rate-break markets, as already stated. They would make applicable a great number of transit balances lower than the proportional rates out of the rate-break markets on indirect routes and would lead to a progressive increase in the number of such balances, in response to requests for the application of the

same principle in other instances, which could not consistently be denied., Another short step would be the establishment of one-factor rates less than the rate-break combinations over direct routes.

The appellants say that the Commission could control the situation, that it has full power to prevent the reestablishment of the dual system, that it could permit certain exceptions, as it has in other instances (Br. p. 91). Its findings and conclusions as expressed in the language just quoted is the answer to this suggestion. And it seems too plain for argument that if the Commission's hands were tied by the injunction sought by appellants it could not control the situation. It could, conceivably, supplant the rate-break system by a system of overhead through rates exclusively, but the appellants do not desire such a system of rates to be established. They want the rate-break with its proportionals. They also want overhead through rates with lower transit balances which can be used for transportation to the same destinations to which the proportional rates apply. In short, they want the dual system. If, however, that system is unlawful, as the Commission found, it is difficult to see how they could secure it. Appellants' case here in effect asks this Court to require the Commission to reestablish the dual system. It seems their suit must fail for this reason.

2. *It would give the rate-break markets the privilege of using a low transit balance to defeat the present proportional rates.* This is logically part of the first reason as discussed above. But in and of itself, even though it did not have the effect of reestablishing the dual system, it would be an adequate reason because it would result in transportation at rates far below those found by the Commission to be reasonable, and because properly related one to another, free from undue prejudice.

3. *It would destroy the present relation required in rates from origins in the Western District.* In the *Grain* case, the Commission, having decided that the rate-break combinations

should be the exclusive rate basis on traffic through the primary markets, proceeded to build the rate structure upon this foundation. As previously stated, it reduced and aligned the in-bound flat rates and the out-bound proportional rates so that all producing areas, carriers, markets, transit points, gateways, and destinations would have reasonable rates and reasonable rate relations, having due regard to distances and other transportation conditions.[19]

The prescribed proportional rates of 6 cents between Omaha and Kansas City and 3 cents between Omaha and Sioux City are important parts of the balanced adjustment worked out by the Commission. These rates apply on traffic in both directions and are used as bases of rates on both north-bound and south-bound traffic, including the important wheat traffic from Nebraska, Kansas, and Oklahoma through Kansas City, Omaha, or Sioux City to Minneapolis, Duluth, and surrounding territory, as well as south-bound wheat and coarse grains from Minnesota, Iowa, South Dakota, and Nebraska through one or another of the Missouri River markets to Memphis as the gateway to the lower Mississippi Valley and the Southeast, and to Arkansas, Louisiana, and Texas. These key rates also fix the relation of the rates from southern South Dakota and surrounding territory through Sioux City, Omaha, and Kansas City to Chicago, St. Louis, and Memphis.

As illustrative of the importance of these rates it may be noted that the rates from all points in Kansas (except the

[19] The relation of rates to one another on a highly competitive commodity like grain is of equal if not greater importance than the inherent reasonableness of the rates considered individually. As stated in the Commission's first report, 164 I. C. C., at p. 697, R. 105: "In some respects, in a traffic sense, wheat is the most liquid commodity known in transportation. The classes or grades of wheat have long been standardized and, commercially, wheat approximates currency. The rate structure should permit it to move freely in all directions. Rates on wheat are closely related to one another, and even a slight change in one will ordinarily affect the movement governed by the others. In fact, generally speaking, all the rates on wheat may be likened to a huge blanket covering the entire country, and a pull on any part of this blanket to the extent of 1 or 2 cents, sometimes even a fraction of a cent, will be felt in every other part."

northeastern corner) to Omaha are made by adding to the local rate from Kansas origin to Kansas City the proportional rate of 6 cents from Kansas City to Omaha. From such Kansas points to Sioux City the through rate is composed of the local rate to Kansas City, plus the proportional rate of 6 cents from Kansas City to Omaha, plus the proportional rate of 3 cents from Omaha to Sioux City. Thus, from Dodge City, Kans., the local rate to Kansas City is 20 cents, to Omaha 26 cents, to Sioux City 29 cents. To equalize the rates from Kansas, Oklahoma, and surrounding territory to Minneapolis through these three markets, the proportional rate from Sioux City is made 3 cents less than from Omaha, and the rate from Omaha 6 cents less than from Kansas City—the prescribed proportional rates to Minneapolis being 8.5 cents from Sioux City, 11.5 cents from Omaha, and 17.5 cents from Kansas City. In each instance, therefore, the applicable rates through these three markets to Minneapolis is the same, 37.5 cents.

The rate from Omaha to Memphis (as a gateway to the lower Mississippi Valley and the Southeast) is equal to the combination on Kansas City. To Memphis that combination would be the proportional rate of 6 cents from Omaha to Kansas City, and 18 cents from Kansas City to Memphis. By reference to the table of prescribed proportional rates in 205 I. C. C., at page 486 (R. 490–491), it will be noted that the proportional rate from Omaha to Memphis on traffic for the Mississippi Valley and for the Southeast is 24 cents, while the rate from Kansas City to Memphis on traffic for the Mississippi Valley and for the Southeast is 18 cents, the rate from Omaha being 6 cents higher than the rate from Kansas City.

While, as shown above, the rate from Kansas City to Minneapolis is higher than the rate from Omaha by the amount of the prescribed 6-cent proportional between Kansas City and Omaha, and Kansas City is at a 6-cent rate disadvantage compared with Omaha on that northbound traffic, it is at a corresponding advantage over Omaha of 6 cents on southbound traffic.

One of the most important wheat-producing regions in the Middle West is the South Platte region of Nebraska, defined in the report in 205 I. C. C. 383 (R. 370) as that portion of Nebraska south of the main line of the Union Pacific Railroad, which follows the Platte River westward from Omaha. The distances from this region to Omaha are substantially shorter than they are to Kansas City. In view of this fact, the Commission prescribed rates from stations there to Omaha 2 cents less than to Kansas City; e. g., from Holdrege to Omaha, 16.5 cents; to Kansas City, 18.5 cents. Since the proportional rate from Kansas City to Chicago is the same as from Omaha to Chicago, 15 cents, Kansas City is at a 2-cent disadvantage over Omaha on shipments to Chicago—a disadvantage due to the longer distances via Kansas City. But from the South Platte region to St. Louis the distances are about the same through Kansas City as through Omaha, and the through rates are accordingly equalized through those gateways. The prescribed proportional rate from Omaha to St. Louis, 13 cents, is 2 cents higher than the prescribed proportional rate of 11 cents from Kansas City. Thus, from Holdrege to St. Louis via Omaha the rate is 16.5, plus 13, or 29.5, and the rate via Kansas City is 18.5, plus 11, equalling the same total of 29.5.

These are only a few of the many situations dealt with in the reports. They are illustrative of the numerous rate relations worked out, in order to achieve a balanced adjustment that would be both reasonable and free from undue prejudice. As stated in *Wheat Products from Twin Cities to Chicago*, 218 I. C. C. 27, involving some of the rate adjustments effected in the present case, and speaking of the rate relations prescribed:

> The relation of the proportional rates and the requirement of their exclusive application on shipments out of the rate-break markets were prescribed as a reasonable general adjustment that would give to each competing market its due.

If Kansas City were permitted to transit on the Omaha-Chicago proportional rate of 15 cents, it would pay for the in-bound movement from Omaha to Kansas City the proportional rate of 6 cents, assuming that the proper freight bill showing an in-bound shipment to Omaha were surrendered to the time of the shipment from Omaha to Kansas City. Upon arrival at Kansas City the consignee would obtain a freight bill showing the payment of the 6-cent rate and proving the existence of an in-bound shipment to Kansas City. But the transit operator there would not be required to use this bill for any particular out-bound shipment. He could use it on any out-bound shipment whatsoever in order to secure the application of a proportional rate whether that rate applied to Chicago, Peoria, St. Louis, Memphis, or to a point in Arkansas, Louisiana, or Texas. There would be nothing to prevent the Kansas City operator from surrendering this bill to cover an out-bound shipment of wheat that had come, for example, from Dodge City, Kans. The lawful rate prescribed by the Commission from Dodge City, Kans., to Chicago, is 35 cents, composed of the Kansas City rate-break combination of 20 cents in and 15 cents out. If, by the use of the Omaha bill, the operator could secure a transit balance of 9 cents, he could obtain transportation from Dodge City to Chicago for a net rate of 29 cents—the in-bound rate of 20 cents to Kansas City plus the transit balance of 9 cents beyound, thus defeating the prescribed combination from Dodge City to Chicago by 6 cents. He could then surrender the bill covering the Dodge City grain on some other grain going, for example, to the South, and pay no more or less than the established tariff rates (Cf. 205 I. C. C. 301, 336–338; R. 314–316).[29]

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[29] In the regular course of business a carload of grain arriving at a primary market is unloaded into an elevator and its identity lost; and when an outbound shipment moves no one knows where the particular grain in that car originated. Indeed, it may be a mixture of grain from many different origins, or the milled product of grain, such as flour.

If Omaha were permitted to transit on the Kansas City-Chicago proportional rate of 15 cents, an operator there would pay for the in-bound movement from Kansas City to Omaha the proportional rate of 6 cents. He could use the freight bill covering that shipment in connection with a shipment of wheat from a point in Nebraska, say Holdrege, and obtain transportation to Chicago for a transit balance of 9 cents, resulting in a charge for the movement from Holdrege to Chicago of 25.5 cents, whereas the lawful charge prescribed by the Commission is 31.5 cents, composed of 16.5 cents to Omaha plus 15 cents beyond. The freight bill on the Holdrege shipment could be surrendered on some other shipment, say to Minneapolis, and it would pay the lawful rate—11.5 cents—and there would be no penalty to offset the advantage of 6 cents gained on the Chicago shipment.

If Kansas City were allowed to transit on the 15-cent rate from Omaha to Chicago, applied over routes through Kansas City in order to meet the competition of the direct routes from Omaha to Chicago, it would result that a shipment from Holdrege to Chicago over the indirect route through both Omaha and Kansas City would pay 2 cents *less* than a shipment moving over a direct route from Holdrege to Kansas City thence over a direct route to Chicago. There are direct routes from the South Platte region to Kansas City that do not pass through Omaha. If, instead of sending the grain over these direct routes to Kansas City, the shippers could get a rate 2 cents lower by sending it over the indirect routes first to Omaha then to

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Nevertheless, it would be a simple matter for a transit operator at a primary market, say Kansas City, to obtain transportation to Chicago at a transit balance of 9 cents, instead of the proportional rate of 15 cents, of wheat shipped to Kansas City from Kansas. It would not even be necessary for him to unload the car of Kansas wheat. He could immediately reship it to Chicago, without even unloading it from the car, and obtain the transportation at a 9-cent charge, by surrendering a freight bill covering a shipment from Omaha, whereas if the shipper in Kansas shipped that car directly through to Chicago, he could not escape the payment of the Kansas City rate-break combination of the flat rate in and the proportional rate of 15 cents out.

Kansas City, it is evident that little traffic would move over the direct route and the result would be that much of it would pay 2 cents less than the lawful rate prescribed by the Commission.

As previously shown, the rates on wheat from practically all points in Kansas to Omaha are made on basis of the Kansas City combination, i. e., the flat in-bound rate from the Kansas origin to Kansas City plus the proportional rate of 6 cents from Kansas City to Omaha. Thus, at present, when Omaha draws in Kansas wheat it must pay this combination; when it ships it to Chicago it must pay the lawfully prescribed proportional rate of 15 cents. If, however, Omaha could transit on the Kansas City-Chicago proportional rate of 15 cents applied over a route via Omaha in order to meet the competition of the more direct routes, Omaha could completely avoid the payment of the 6-cent proportional rate. Its rate would then be the in-bound flat rate from the Kansas origin to Kansas City plus 15 cents to Chicago. Many such instances could be multiplied and the final result would be that in innumerable instances the carriers would transport grain back and forth between Omaha and Kansas City without any compensation whatsoever.

Many other instances of the same kind could be cited, but these are sufficient to illustrate the utter disruption of the relations of rates painstakingly worked out by the Commission if transit balances of 9.5 cents became available for transportation from Omaha and Kansas City to Chicago, in lieu of the present proportional rates of 16 cents. Repercussions would be felt throughout the entire fabric of the structure, both east and west of the primary markets and would extend also to the territory east of the Mississippi.[21]

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[21] The prescribed proportional rate from Duluth and Minneapolis to Chicago, 12 cents, is 3 cents lower than the prescribed proportional rate of 15 cents from Sioux City, Omaha, Kansas City and other Missouri River markets. In *Southwestern Millers League* v. *A., T., & S. F. Ry. Co. et al.*, 227 I. C. C. 795, decided July 12, 1938, the Commission prescribed proportional rates from Chicago to eastern points 3 cents higher on grain from Duluth and Minneapolis than on grain from the Missouri River markets, with the

IV

In finding, upon a review of all the relevant facts and circumstances shown of record, that the alleged discrimination or prejudice was not unjust or undue, the Commission considered only pertinent matters properly to be considered in rate regulation

It is argued by appellants that the Commission based its finding of unjust discrimination upon other than transportation considerations and they contend, if we understand them, that the Commission should have wholly excluded from consideration the questions (1) whether to grant relief would reestablish the dual system of rates from the primary markets, (2) disturb and disrupt the rate-break structure, (3) reduce the revenues of the carriers (Br., pp. 29, 41, 86–91).

1. Reestablishment of the dual system would restore the conditions which the Commission had found not only highly unsatisfactory but unlawful. These conditions, relating to transportation rates, were obviously "transportation" conditions.

2. Appellants' argument is to the effect that the preservation of the rate structure was an improper consideration, that "the basis for the orders is the desire to protect a rate structure" (Br., p. 90); that in *U. S.* v. *Chicago, M., St. P. & P. Ry. Co.*, 294 U. S. 499, this Court annulled a Commission order because "based upon a desire to preserve the rate structure rather than upon proper transportation consideration." (Br. 37.)

In that case the Milwaukee had proposed a certain reduced rate. The Commission suspended the proposal and after hearing found it was not justified, on the ground, among others, that similar reductions would probably follow in other rates

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result that the aggregate charges from the latter markets, on grain originating in the West and Southwest, are equalized with those from Duluth and Minneapolis, on grain from the Northwest, through Chicago, to eastern points. This relationship would be disrupted, and probably could not be restored satisfactorily, if the grain moved from the western primary markets to Chicago at *varying unpublished* transit balances.

and that the rate structure would be broken down. But the rate structure there involved, applying on bituminous coal in the Indiana-Illinois-Kentucky-Wisconsin territory, had not been fixed by the Commission. It was composed of carrier-made rates and it was criticized in the Commission's report. The Court pointed out that the whole situation was subject to the power of the Commission:

> The whole situation is subject to the power of the Commission, which may keep the changes within bounds. If Illinois lines attempt to lower their rates again, a proceeding will be available to maintain a fair relation. If the lines in Kentucky, operating in interstate commerce, apply for new reductions, the supervisory power of the Commission will subject them to the rule of reason.

In the same case the Court further said:

> But other remedies even more plainly adequate are at hand in case of need. Under section 15 of the statute the Commission of its own motion may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another, and may build the structure of the rates accordingly. *Florida* v. *United States*, 292 U. S. 1; *United States* v. *Louisiana*, 290 U. S. 70.

This is the authority the Commission exercised in the case at bar. It has conducted a comprehensive inquiry into the rates of all the lines in the Western District on grain and grain products, has fixed the fair relation between one line and another, between the various producing areas and between the markets. It has built the structure of the rates, it is within its power to keep changes within bounds.

Moreover, in *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, the Commission, as in the *Milwaukee* case, found a proposed rate reduction not justified. As stated in the opinion of this Court, at page 479, "the appellants'

principal complaint is that the Commission raised the permissible minimum rate to prevent disruption of the existing rate structure and relationship of rates for carriage from various producing regions to Ohio destinations, and that an order grounded upon any such consideration is unauthorized and violates the principle announced in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499."

In rejecting the complaint and sustaining the Commission's order the Court held the situation in the *Youngstown* case to be quite distinct from that in the *Milwaukee* case, pointing out that in the *Youngstown* case the Commission had prescribed the existing rate structure:

> The position is not well taken. This record exhibits a situation quite distinct from that disclosed in the cited case. In the first place the Commission here found the required minimum reasonable; in the second place, it had, after full investigation in this and the *Ohio* case [192 I. C. C. 413, order sustained, 6 F. Supp. 386, 292 U. S. 498], held the existing rate structure—built upon certain reasonable key or controlling rates by application of proper differentials—just and reasonable, and the ex-river rates here in issue, in contrast, too low.

Appellants' suggestion to the effect that the Commission was without power to control proposed changes that would disrupt the just and reasonable rate structure which it had prescribed—and which is here not attacked—is thus plainly without merit.

In an attempt to show as a matter of law that the Commission must confine its consideration to "transportation conditions," appellants cite *United States* v. *Ill. Cen. R. R. Co.*, 263 U. S. 515, in which *inter alia* the Court said:

> To bring a difference in rates within the prohibition of Section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not

justified by the cost of the respective services, by their values, or by other transportation conditions.

In the same case, at pp. 525–526, this Court further said:

> The innocent character of the discrimination practiced by the Illinois Central was not established, as a matter of law, by showing that the preferential rate was given to others for the purpose of developing traffic on the carrier's own lines or of securing competitive traffic. These were factors to be considered by the Commission; but they did not preclude a finding that the discrimination practiced is unjust. Such was the law even before Transportation Act, 1920. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 218, 220; *Interstate Commerce Commission* v. *Alabama Midland Ry.*, 168 U. S. 144, 167, 175. In view of the policy and provisions of that statute, the Commission may properly have concluded that the carrier's desire to originate traffic on its own lines, or to take traffic from a competitor, should not be given as much weight in determining the justness of a discrimination against a locality as theretofore. For now, the interests of the individual carrier must yield in many respects to the public need. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184; and the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate-policies of a competitor, which were theretofore uncontrollable.

It is evident from the decision as a whole that the term "transportation conditions" is very broad. The term is obviously not used in a narrow sense, such as appellants seem to ascribe to it. It undoubtedly means much more than operating conditions, or conditions relating merely to the physical movement of the traffic. The *Illinois Central* case (263 U. S.

515) together with others, including *Texas & Pacific Ry.* v. *I. C. C.*, 162 U. S. 197, *I. C. C.* v. *B. & O. R. R.*, 145 U. S. 263, *Ann Arbor R. Co.* v. *United States*, 281 U. S. 638, establish that the viewpoint of the Commission must be broad, and that the Commission is not bound to find unjust discrimination upon a restricted consideration, such as that urged by complainants.

In *I. C. C.* v. *C., R. I. & P. Ry.*, 218 U. S. 88, 103, the Court said:

> The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided. And arguments which point out and assail the imperfection which may appear in the result, this Court has taken occasion to characterize.

Here the Court, after quoting from *I. C. C* v. *Ill. Cent. Ry. Co.*, 215 U. S. 452, said:

> It was, of course, recognized in that case that there must be power in the Commission to make the order which might be subject to attack, but want of power was distinguished from the mere expediency or wisdom of making it, which, it was disclosed, was not open to judicial review.

3. By their formal complaints, complainants sought certain additional transit at the primary markets. As one of its reasons for refusing to order it, the Commission stated that it would result in reestablishment of the dual system of rates (231 I. C. C.; R. 650). Reestablishment of the dual system would mean both proportional rates and varying transit balances lower than the proportional rates to cover the outbound transportation from the primary markets, with the result that

the revenues of the carrier would be substantially reduced. The Commission so found in 229 I. C. C., 15 (R. 643):

> To require the additional transit requested, under either section 1 or section 3, would be to impose an additional burden upon the carriers in respect of one of their most comprehensive adjustments and important groups of commodities, and, incidentally, at a time when they are least able to bear it.

To consider the effect of the relief sought upon the revenues of the carriers, along with all the other relevant facts and circumstances, in determining whether the alleged discrimination was undue or unjust and therefore unlawful, was not only within the authority of the Commission but was within its duty, under the new policy adopted by Transportation Act, 1920, and carried forward in Transportation Act, 1940 (54 Stat. L. 898).

As stated by Chief Justice Taft, speaking for the Court in *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 585, Transportation Act, 1920, made a new departure. "Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."

Section 15a, as enacted in 1920, required the Commission to readjust the rates so that they would provide a fair return to the carriers to enable them to maintain an adequate railway system.

Emergency Railroad Transportation Act, 1933 (48 Stat. 220), amended section 15a so as to provide that in the exercise of its power to prescribe just and reasonable rates, fares, and charges, and all classifications, regulations, and practices relating thereto, the Commission "shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." [22] See *New England Divisions Case*, 261 U. U. 184; *Dayton-Goose Creek Ry.* v. *U. S.*, 263 U. S. 456; *Florida* v. *U. S.*, 282 U. S. 194; *Louisiana* v. *U. S.*, 290 U. S. 570; *Florida* v. *U. S.*, 292 U. S. 1; *Texas v. U. S.*, 292 U. S. 522.

It was plainly not error for the Commission to consider the revenue effect of the proposal, along with other pertinent matters.

V

The orders in question do not disturb natural advantages of rate-break markets

Appellants argue at pp. 57 et seq., of their brief, that the breaking of rates at the primary markets and the advantages flowing from this rate-break are all the result of natural conditions prevailing at the rate-break markets; that the reason they are rate-break points is because the rates naturally break there, because these points are located where they are and because, for the most part, one set of railroads ends and another begins at these points; that the Commission has no power to offset or equalize such natural advantages.

The Commission has disavowed in several cases authority to deprive a locality of natural advantages through artificial

[22] This provision is brought forward in Transportation Act, 1940. See also the declaration at the opening of that Act of the National Transportation Policy.

rate adjustments. But appellants' argument that the benefits flowing to primary markets from the rate-break system are due to natural advantages seems clearly unsound. It is true the rails of certain carriers end at the primary markets, but such roads connect with each other and with other roads at their termini, and form through routes. The Commission has full authority to establish reasonable through rates over these through routes; and it is not required to retain the rate-break method even over those routes. There are a number of railroads whose lines extend through the primary markets. Under the broad powers of the Commission to regulate interstate rates, it is within its authority to establish overhead rates over all lines through the primary markets, in lieu of the rate-break method now approved. *Virginian Ry.* v. *U. S.*, 272 U. S. 658, and cases cited, especially at page 666.

Indeed, one of the important issues in the Grain case, as stated in 164 I. C. C., 639 (R. 47), was "whether the rates through the primary markets shall be made on the combination of flat rates to and proportional rates from the markets exclusively, or in part, or at all." The Commission concluded to adopt the rate-break method exclusively, but warned that if that method failed, a uniform mileage basis through the markets, with transit balances *exclusively* beyond the markets, would be a possible alternative. It said (164 I. C. C., pp. 661–662, R. 69–70):

> Pronounced changes in market relations will result from the foregoing findings. [Referring to the general finding made on pp. 660–661 of the report, R. 68–69.] The original basis of overhead through rates with transit at the primary markets proved unsatisfactory and gave rise to the proportional rates. The proportionals were quite generally observed prior to the general percentage changes and were productive of much less complaint than the present proportional rates and transit balances, which do not function together harmoniously. A return to the method, strictly observed,

> of making through rates by combinations on the primary markets is warranted by this record, in the interest of market, carrier, and producer. If it should fail, a uniform mileage basis through the markets, with transit balances exclusively beyond the markets, is a possible alternative.

In the same report the Commission at p. 662 (R. 70) quoted from *Minn. Traffic Asso.* v. *C., M. & St. P. Ry. Co.*, 46 I. C. C. 685, 692, as follows:

> This proceeding is additional evidence "that there has never been an adjustment that was satisfactory to the rival markets." Perhaps only a uniform mileage scale would preclude claims of relative maladjustment, and while no market desires this system to be here applied or applied generally, eventual resort to this basis may possibly be the only outcome of reiterated complaint over a complex situation which we have repeatedly tried to adjust.

Perhaps it may be conceded that because of their location, the number of railroads serving them, the existence of storage capacities for a huge volume of grain, and the fact that they are great primary markets, it is logical, convenient, and workable that the rates should break on these markets. The Commission fully recognizes this, since it adopted the rate-break system of rates on grain through these markets after exhaustive investigation and consideration. But it would not seem that the primary markets are entitled to that particular form of rates, as a matter of law. While under the Act they are entitled to reasonable rates that are free from unjust discrimination and undue prejudice, it can hardly be challenged that the form of the rates, whether they shall be combinations or overhead through rates, is a matter within the administrative discretion and judgment of the Commission.

Nor can it be said that there is anything in the location, etc., of the primary markets that fixes, as a matter of law, the measure of their rates. If their location and other natural

advantages entitle them to the rate-break (which is not conceded), it would not follow, as a matter of law, that they are entitled to *both* rate-break combinations and overhead through rates with transit balances, especially when the out-bound component of the rate-break combination—the proportional rate—is fixed by the Commission at a substantially lower level than that previously in effect, *in consideration of the elimination of the lower transit balances.*

If the primary markets transited only on overhead through rates, they would have varying out-bound transit balances. As the Commission determined the measure of the proportional rates by averaging the transit balances under reasonable overhead through rates [determined but not prescribed] and reasonable in-bound flat rates, it follows that the reduced proportional rates prescribed are approximately equal to the average of transit balances that would apply if reasonable overhead through rates were in effect via the markets with transit thereunder at the markets. If Kansas City, e. g., were allowed to transit under the prescribed Omaha-Chicago proportional rate of 15 cents, applied as an overhead through rate over certain routes through Kansas City in order to enable those routes to compete with the other routes not running through Kansas City, that market would have a transit balance of 9 cents to Chicago, since it would have paid the proportional rate of 6 cents in-bound to Kansas City from Omaha. But to permit this transit, in addition to the almost unlimited transit under the rate-break combinations on Kansas City, would give Kansas City a *particular* transit balance substantially lower than its proportional rate of 15 cents to Chicago, fixed in the manner above shown. Thus Kansas City, while retaining a proportional rate based on the average of transit balances, would obtain a particular transit balance *below* the average and at the same time escape all transit balances *above* the average. If the interior points have a low transit balance on these particular routes and rates, they will

pay in other instances high transit balances. They have no proportional rates. They may transit only on overhead through rates with all the restrictions attached to transit under such rates, as previously shown herein, and must pay the transit balance in each instance in which they obtain transit at all, whether such balance is high or low.

There appears to be nothing in the location or other natural advantages of the primary markets that entitles them to the proportional rates, determined and fixed in the manner above explained, and also to certain transit balances lower than those proportional rates.

It thus seems clear that in prescribing the rate-break system for application on grain transited at the primary markets, the orders in question fully preserve the advantages of location and other natural advantages of those localities, and in requiring that they adhere to that system exclusively, the orders do not have the effect of neutralizing or offsetting their natural advantages. As stated by the court below (R. 746–747):

> The establishment of proportional rates at the primary markets was to an extent because of their natural location and the convergence and radiation of rail lines thereat and therefrom. The proportional rate was considered peculiarly appropriate to the natural conditions existing at the primary markets. It was intended to secure to those markets all of the advantages of the through rate with transit to which the primary markets were entitled from that rate because of their geographical location and natural advantages and the additional advantages inherent in the proportional rates, which additional advantages sprang from natural and geographical considerations. But when the Commission examined the situation resulting from the use of both the transit on through rates and the proportional rates by the same markets it found that the combining of the use of both resulted in advantages to the pri-

mary markets which did not flow from their geographical location but were on the contrary in spite of natural conditions and to the material disadvantage of other markets.

VI

The legal effect of the challenged orders is the same as if supported by all members of the Commission

In section IV of their brief, appellants refer to the dissents of commissioners in the last two reports. But the dissenting commissioners disagreed with the majority in reference to the weight to be given to the evidence or the judgment to be exercised upon the administrative problem presented. The weight of the evidence was, of course, for the Commission.

> • • • If the determination of the Commission finds substantial support in the evidence, the courts will not weigh the evidence nor consider the wisdom of the Commission's action. [*New England Divisions Case*, 261 U. S. 184, 203; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658.]—*C., R. I. & P. Ry. Co.* v. *United States*, 274 U. S. 29, 33–34.
>
> To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province.—*Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 663.
>
> The credibility of witnesses and weight of evidence are for the Commission and not for the courts, and its findings will not be reviewed here if supported by evidence. See *Interstate Commerce Comm.* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 92, 100; *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320;

Assigned Car Cases, 274 U. S. 564, 580, 581.—*Warehouse Co.* v. *United States*, 283 U. S. 501, 508.

Appellants' reference to these dissents seems to be but another manifestation of their erroneous conception that this Court will perform administrative functions. The decision in *Int. Comm. Comm.* v. *Delaware, L. & W. R. R.*, 220 U. S. 235, 251, is here relevant.

> As shown by the opinion of the Commission and that of the two members who dissented, there were many and wide differences in the views expressed. • • • We say the contentions all reduce themselves to this, because in their final analysis all the other differences, insofar as they do not rest upon the legal proposition just stated, are based upon conclusions of fact as to which the judgment of the Commission is not susceptible of review by the courts. *Baltimore & Ohio R. R.* v. *Pitcairn*, 215 U. S. 481. This at once demonstrates the error committed by the lower court in basing its decree annulling the order of the Commission upon its approval and adoption of the reasons stated in the opinion of the dissenting members of the Commission. This follows, since the reasons given by the dissenting members, except insofar as they rested upon the legal proposition we have just stated, proceeded upon premises of fact, which, however cogent they may have been as a matter of original consideration, were not open to be so considered by the court because they were foreclosed by the opinion of the Commission.

Cf. *Int. Comm. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 550; *Mfrs. Ry. Co.* v. *United States*, 246 U. S. 457, 482.

In *B. & O. R. Co.* v. *United States*, 298 U. S. 349, 362, this Court held: "The legal effect of the challenged report and order is the same as if supported by all members of the Commission. [Citing cases.]"

VII

The Commission's orders, granting to the primary markets all the advantages of transit under the rate-break system, do not subject them to legal damage by denying to them the further advantage of additional transit under competitive overhead rates

The Commission's reports make it clear that even if there were no exceptions whatever to the rule for the exclusive application of the rate-break combinations, the primary markets would still be confronted with their *major competition.*

Using again the typical Omaha-Chicago proportional rate of 15 cents, one of the most important rates in the entire Western District: As previously shown this rate applies over numerous direct routes which do not pass through Kansas City. There are important transit points on these direct routes, such as Des Moines, Cedar Rapids, and Davenport, Iowa (229 I. C. C. 9, 14; R. 641), which would have transit under the 15-cent rate whether it was applied over routes through Kansas City or not. The Commission found that these points are not, for that reason, unduly preferred (R. 642) and it follows that Kansas City, in this situation, is not unduly prejudiced. In respect of shipments transited at points on the direct route, the Commission's finding was as follows (229 I. C. C. 14–15; R. 642):

> Using again the familiar illustration of lack of transit at Kansas City on the basis of the proportional rate from Omaha to Chicago: (1) A transit point on the direct route, such as Cedar Rapids, cannot be said to be unduly preferred; nor can Omaha or Chicago, each with the benefit of the direct route; * * *

Under the original exception to the rule, competing carriers whose routes pass through an intervening primary market were permitted to establish over their routes the same rate that applied over the direct route, in order to meet the competition of the carriers having the direct routes, but, as heretofore explained, mere establishment of the rate over the

indirect route would not effectively meet the competition where the direct route carriers granted transit at an intermediate interior point. Under modifications of the rule, the competing carriers were permitted to establish transit at an intermediate interior point on their routes where such point was also a point on the direct route and had transit. Hereinbefore this situation was illustrated by reference to routes and rates from Sioux City to Chicago with transit at Ft. Dodge, Iowa. Another illustration may aid in further clarifying it.

Des Moines, Iowa, is on the direct line of the Chicago, Rock Island & Pacific between Omaha and Chicago. The 15-cent proportional rate from Omaha to Chicago applies over the Rock Island, whose tariffs provide for transit under that rate at Des Moines. The lines of the Missouri Pacific and the Chicago Great Western form a route from Omaha to Chicago through Kansas City and Des Moines. Under the exceptions to the rule, these lines have published the 15-cent proportional rate as a joint rate applying over their route from Omaha to Chicago, and they grant transit at Des Moines, this action being taken to meet the competition of the Rock Island.

Des Moines would have transit under the 15-cent rate over the Rock Island whether or not the Missouri Pacific and the Chicago Great Western applied the 15-cent rate over their route and whether or not they granted transit under it. Speaking of such a situation, the Commission found:

> * * * the benefit here is wholly to the carrier over the indirect route, in its competition with the carrier over the direct route * * * (229 I. C. C., 15; R. 642).

In other words, the interior point, Des Moines in the particular illustration, is not benefited by the action of the Missouri Pacific and the Chicago Great Western in establishing the 15-cent rate over their route through Kansas City and Des Moines and granting transit at Des Moines, in order to meet the competition of the Rock Island. For, even without that action,

Des Moines has the rate over the Rock Island and has transit under it. The only benefit is to the Missouri Pacific and the Chicago Great Western, in that it enables them to participate in the traffic on even terms with the Rock Island, if they can induce the shippers to send some of the traffic over their indirect route. Kansas City is not injuriously affected because the traffic through Des Moines is divided among competing carriers.

Under the later modification to the rule, other points on the indirect routes were permitted to be given the restricted form of transit accorded interior points on other routes, upon a finding by the Commission that without it they would be subjected to unlawful prejudice. This, the Commission found, does not materially injure appellants, and *at most* was merely *an aggravation* of their general competitive situation. The Commission's finding reads (229 I. C. C., 14; R. 641–642):

> Cancellation of the transit accorded points on the indirect route, through a rescinding of our modification of the findings in the *Grain case* to permit of that transit, would deprive these interior transit points of the same kind of transit accorded interior transit points on other routes and, as found in the last report, page 245, *would not materially benefit complainants*, who would still be confronted with their major competition * * *. [Italics ours.]

Thereupon, the Commission quoted from its previous report, 223 I. C. C. 235, 245, as follows:

> * * * A return to our first view would, however, be a hardship upon the milling industry at many intermediate points, *with little or no benefit to the markets*, which would still be at a disadvantage in competing with other rate-break markets, and interior points on lower-rated routes. * * * [Italics ours.]

It then said it seemed clear "that the transit at points other than the rate-break market on the indirect route, resulting from the further modification of the findings in the *Grain case*, was at most merely an aggravation of a general

competitive situation which had already foreshadowed these complaints, and that it afforded a welcome additional argument in the general cause rather than a sound basis for a claim of undue preference."

So that, even if the Commission rescinded its exception permitting transit at interior points on the indirect routes, it would result in little or no benefit to the markets on the same routes, since the competition of other rate-break markets and the competition of interior points on the direct routes would remain. This is a disadvantage to the primary markets insofar as they are intermediate points on the indirect routes, that inheres in the rate-break system. The markets do not wish the rate-break system canceled, since it is of great advantage to them. They are under a minor disadvantage in a general rate structure that is otherwise highly advantageous to them. The Commission weighed this minor disadvantage to the primary markets against the much greater injury that would follow from its removal, including the resulting injury to the carriers through substantial loss of revenues, needed to maintain adequate transportation service, which would result from the necessity of carrying great volumes of grain at 9 cents instead of the rate of 15 cents prescribed by the Commission as reasonable, and the destruction of the relation of rates whereby grave injuries would result to producing areas throughout the states west of the primary markets owing to the fact that they would in all instances have to pay the prescribed proportional rates whereas the primary markets could obtain substantially lower transit balances. These injuries, in the judgment of the Commission, outweigh the minor disadvantage of the primary markets. Perhaps, in a complex situation such as that here presented, exact equality in respect of each of and all the many rates and rate relations involved is unattainable. But the Commission's orders are not void even if they fail in these circumstances to attain exact equality. As in the *Illinois Central* case, 215 U. S. 452, 478, appellants' arguments "but suggest the complexity of the subject, and the difficulty involved in making any order which may not be amenable to the criticism that it leads to or may beget some inequality."

VIII

The relief sought—annulment of only part of the general adjustment prescribed by the Commission—should be denied because to grant it would require the exercise of the administrative function of revising the adjustment

The prayer of the bill, in the alternative, asks the court to set aside the Commission's orders "*in so far as* the same require or permit a basis of transit at the terminal markets herein mentioned different from the basis of transit at competing interior or intermediate points, and *in so far as* the same require or permit transit at such terminal markets at different and higher rates than at such interior or intermediate points * * *." [Italics ours; R. 24.]

This alternative prayer, if granted, could be complied with either by withdrawing the particular transit in question from the intermediate interior points or by extending it to the intermediate primary markets, but it is clear that appellants would not want the alleged discrimination corrected by withdrawing the transit from the intermediate interior points. This is clear from the Commission's report in 229 I. C. C. 9, in which, at pp. 13–14 (R. 641), the Commission said:

> Complainants themselves do not want the transit in question taken away from the points other than the rate-break market on the indirect route. In pressing their contention of undue prejudice under section 3 they assume that an order for its removal would be complied with by the establishment of transit at the rate-break market instead of by its cancelation at the other points. They say they cannot conceive of the carriers complying with a mandatory order in any other manner. Only when pressed for a definite commitment, in the event of the carriers' exercise of the other alternative, do they say that they must ask for the cancelation of the transit at these other points if it is not established also at the rate-break market.

In the same report, at pp. 14–15 (R. 642), the Commission further said:

> * * * a mere finding of undue prejudice here, even if warranted, could be satisfied by cancelation of transit at the points other than Kansas City, instead of establishing it as Kansas City, *but such a compliance would not satisfy the main complaint.* [Italics ours.]

If the alternative prayer of the bill were granted, it could be lawfully complied with only by extending the transit in question to the primary markets, because, as the Commission found (229 I. C. C. 9, 16; R. 644), withdrawal of this transit from the interior points on indirect routes through intermediate rate-break markets would result in undue prejudice against such points and undue preference of other interior points on the direct routes.

What appellants seek in this suit is the extension of the transit to the primary markets. In substance they ask the Court to compel the Commission to issue a mandatory order to the carriers requiring that they grant the transit there.

The result would be that the primary markets would obtain highly important transit balances which would carry a great volume of grain, at levels substantially lower than the reduced, reasonable proportional rates prescribed by the Commission.

Yet, as previously noted, the Commission prescribed the reduced proportional rates upon the condition that the lower transit balances be eliminated.

Appellants' bill does not ask that the prescribed proportional rates be enjoined. Appellants wish to retain these proportional rates and at the same time obtain the reestablishment of the lower transit balances. But it is obvious from the Commission's reports that the reduced inbound flat rates and the reduced outbound proportional rates would not have been prescribed without the requirement that the transit balances be eliminated. It is not certain that any proportional rates would

have been prescribed without that condition. Without that, the Commission might have concluded, in order to remove the illegality found in the dual system of rates, to prescribe overhead through rates with transit balances exclusively. It is also obvious from the Commission's reports that the Commission built the entire structure of rates through the primary markets upon the foundation of the rate break, carefully aligning the inbound flat rates and the outbound proportional rates so as to accord to all producing areas, markets, gateways, interior milling points, destinations and carriers not only reasonable rates but also reasonable and proper rate relations as nearly as could possibly be done, considering distances, volume of the movement, value of the commodity, market and carrier competition, carrier revenues and other elements entering into the making of rates.

Thus, it is clear that the appellants, in not attacking the prescribed rate structure as a whole but in seeking to eliminate an integral part of it, in reality ask the Court to revise the prescribed adjustment.

The order is not segregable in this respect. It is true the Urgent Deficiencies Act (38 Stat. 219), authorizes the setting aside, in whole or in part, of a Commission order. But inasmuch as administrative orders operating *in futuro* are legislative in character, the Court will decline to enjoin an integral part of an unsegregable order, on the ground that it would trench upon the legislative function.

This Court has repeatedly held that it will not *revise* a rate adjustment fixed by an administrative body acting within the scope of its authority. As said by Chief Justice Hughes in *Nor. Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 599:

> As repeatedly observed, we do not sit as a revisory board to substitute our judgment for that of the legislature, or its administrative agent, as to matters within its province. *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439; *Louisville & Nashville R. R.* v. *Garrett*, 231 U. S. 298, 313.

And, in *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38, 51:

> The court does not sit as a body of revision to substitute its judgment for that of the legislature or its agents as to matters within the province of either. [Citing cases.]

The relief sought should be denied on the ground that to grant it would require the Court to perform administrative functions.

CONCLUSION

It is respectfully submitted that the decree of the court below, dismissing the bill for want of equity, should be affirmed.

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Supreme Court of the United States

No. 143—OCTOBER TERM, 1941

THE BOARD OF TRADE OF KANSAS CITY, MO., J. F. LEAHY, R. E. SWENSON, G. A. JOHNSON, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, ET AL.

APPELLANTS' PETITION FOR REHEARING

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To The Honorable, The Supreme Court of the United States:

Now come Appellants in the above-entitled cause and present this, their petition for rehearing, and in support thereof respectfully represent and show:

I.

That it is evident from the Opinion filed herein on January 5, 1942, that this Honorable Court misconceived and misconstrued the theory upon which this appeal was presented.

The question raised by Appellants was purely one of law, namely, whether the Interstate Commerce Commission may legally require one point on a through route to pay higher rates in order to transit grain than another point on the same or a comparable route.

Specifically and by way of illustration:

(1). Whether Omaha may be required to pay 22½ cents (per one hundred pounds) to transit grain from Kansas City to Chicago, when Falls City, Des Moines, and numerous other points on the same or comparable routes pay only 16 cents. (See Plate I, R. 723.)

(2). Whether Kansas City may be required to pay 22½ cents to transit grain from Omaha to Chicago, when Independence, St. Louis, and numerous other points on the same or comparable routes pay only 16 cents. (See Plate II, R. 724.)

(3). Whether Kansas City may be required to pay 18½ cents to transit grain from Omaha to St. Louis, when Lincoln, Topeka, Independence, Cedar Rapids, Dubuque, Davenport, and numerous other points on the same or comparable routes pay only 14 cents. (See Plate III, R. 725.)

Appellants urged that nothing could justify any difference in rates as between the points named, since the transportation and transit service and the cost thereof are exactly the same; that this constitutes discrimination and prejudice on the face of it, and hence that on the facts here presented, there is no room for administrative or expert judgment, because the discrimination shown is palpably unjust and forbidden by the Act, as this Court held in *Mitchell* v. *U. S.*, 313 U. S. 80.

Instead of taking this view of the case and treating this fundamental or basic question as one of law, this Honorable Court concerned itself mainly with certain incidental matters, which caused the basic issue to be submerged in considerations having to do with the ad-

ministrative functions of rate-making, and therefore applied the rule that the findings of the Commission are conclusive.

Thus, the Opinion states (p. 10)* that "The process of rate making is essentially empiric," and says in effect that such questions should be left to an expert body, thus overlooking the fact that the question raised is one of law, and that it is for the courts to see that administrative bodies stay within the law.

The process of rate-making may be empiric, but the question as to whether correct principles of law are applied in the process is not. Experience or observation in rate-making are not necessary to determine whether the Commission has violated the law in requiring different rates for exactly the same or comparable services.

Again the Opinion states that, "We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course pursued by the Commission." (p. 11.)

We wish to respectfully say that Appellants raised no questions requiring technical competence and did not request nor expect this Honorable Court to pass upon the wisdom of the course pursued by the Commission. The question simply is whether under the law the Commission may require different charges for like services, and it requires no technical competence nor administrative wisdom to pass upon that.

Finally, the Opinion states:

> "It is not for us to tinker with so sensitive an organism as the grain rate structure only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate-break adjustment was designed to remove

* Page references are to the printed Opinion.

> —evils which, for all we know, would be far more serious than those complained of by the appellants." (p. 11.)

May we again respectfully say that Appellants did not request nor expect this Honorable Court to tinker with the grain rate structure, but to declare the law which should govern the Commission in tinkering with it.

What Appellants requested this Honorable Court to do was to say that the Commission could not lawfully require the primary markets to transit on higher rates than interior points, and then leave it to the Commission to correct the situation in such a way as not to restore any evils. As it is, the Commission, in correcting a situation which it deems improper, has seriously injured the primary markets by creating discrimination and prejudice against them, which is unlawful.

Incidentally, the Opinion itself suggests (p. 10) other methods the Commission might have employed to eliminate the evils which it thought existed, none of which would be prejudicial, if made applicable alike at primary markets and interior points. The fault with the present method is that it has not been given equal application. The Commission approved the rate-break combinations, on which both the primary markets and interior points are permitted to transit. Then it authorized exceptions to the rate-break combinations (overhead rates) to meet carrier competition, and prohibited transit on the exceptions at the primary markets, while continuing it at interior points, and thus created the discrimination and prejudice complained of.

The failure of this Honorable Court to recognize that the question raised on this appeal is one of law is also responsible for its misconception of other points we made in this case.

Thus, we urged that the opinion of the Commissioner who conducted the Grain Rate investigation and of other Commissioners should be taken into consideration and given weight in deciding the issue here involved.

However, the Court simply took the view that the fact that the Commission itself was of divided mind, "emphasizes that the problem is enmeshed in difficult judgments of economic and transportation policy."

The fact of the matter is that there was no difference of opinion on the facts involved. The members of the Commision differed primarily on the question of law, that is, on whether the Commission had the power to make the orders requiring different rates for the same service. The minority held that the Commission had no such power; that the intent of the Act was to uproot all discriminations and not to balance one against the other; and that there was no justification in law for the material disparity in rates.

Since the basic question here involved is one of law, the conclusion of the majority of the Commission should not be regarded as controlled by the doctrine of administrative finality, as it is for the Court to determine the applicable principles of law.

II.

This Honorable Court overlooked certain important considerations and misconceived certain fundamental principles of law in holding that the provision of the Act to Regulate Commerce, which forbids subjecting a transit point to undue and unreasonable prejudice or disadvantage, "* * * does not mean that the law compels identity of treatment for like services at different places."

This establishes a new principle of law, which, in its

application, we must respectfully say, would be extremely unfair, unjust and unreasonable, and would practically nullify the fundamental purpose of the Act. If the Act does not require that all shippers and localities are entitled to equal treatment for like transportation and transit services, then it has missed its great purpose, for even the common law recognized that public policy demanded equal treatment for all, though its processes made enforcement thereof inadequate and unsatisfactory. That was the primary reason for the creation of the Commission, and when it goes contrary to that principle, as it has in this case, its action should not be sustained.

This Court has repeatedly said that the great purpose of the Act was "to compel the carrier as a public agent to give equal treatment to all"; "to cut up by the roots every form of discrimination, favoritism and inequality"; and to "place all shippers upon equal terms." *New Haven* v. *I. C. C.*, 200 U. S. 361, 392; *L. & N. R. Co.* v. *Mottley*, 219 U. S. 467, 478; *United States* v. *Union Stock Yards*, 226 U. S. 286. In the recent *Mitchel case, supra*, this Court said that the evil of discrimination was "the principal thing aimed at."

If the emphasis in the statement here under discussion is to be put upon the words "at different places," then it is only necessary to remind this Honorable Court that the Act expressly prohibits discrimination and prejudice between localities, as well as shippers.

The Court based its conclusion upon the doctrine that, whether a preference or advantage is undue or unreasonable or unjust is a question of fact for the Commission to determine and upon which its decisions are not to be disturbed, unless, among other things, they are unsupported by evidence, or for some other reason amount to an abuse of power, quoting from *Manufacturers Ry. Co.* v. *U. S.*, 246 U. S. 457, 481.

The fundamental and controlling fact in this case is that there is no difference in the transportation and transit service or the cost thereof, whether transit takes place at a primary market or at an interior point, which alone would justify a difference in rates, and hence the finding of the Commission that the preference or advantage to interior points is not undue and unreasonable is not supported by evidence. On the contrary, the facts mentioned support a finding that the primary markets are subjected to undue and unreasonable prejudice and disadvantage.

The case referred to apparently was also regarded as direct authority for the statement that the law does not compel identity of treatment for like services at different places. If it could be so construed, it would be the only one in which it has ever been so held, but reference to it will show that it does not support the proposition.

It is true that in that case the Commission approved a charge in excess of the line-haul rates to industries located on the Manufacturers Railway while the carriers continued to absorb the charges of the Terminal Railway, but this was largely due to the fact that the latter was owned by the trunk lines, while the former was owned by a large brewery and was regarded by the Commission essentially as a plant facility, the operating expense of which should be borne by the brewery. This and other differences in transportation and physical conditions were held by the Commission to justify the trunk lines in absorbing the charges of one and not of the other. And it was on these grounds that this Court sustained the Commission, as indicated by the following:

> "In the present case the negative finding of the Commission upon this question of undue discrimination was based upon a consideration of the different

> conditions of location, ownership and operation as between the Railway and the Terminal."

In view of the fact that this case turned upon the conditions mentioned, it should not be regarded as authority for the proposition under discussion. This Court has held a number of times in much clearer cases that only differences in transportation conditions will justify a difference in rates. In the leading case of *U. S.* v. *Illinois Central,* 263 U. S. 515, this Court said:

> "To bring a difference in rates within the prohibition of Sec. 3, it must be shown that the discrimination practised is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions."

Appellants respectfully submit, therefore, that the Commission exceeded its powers under the Act by attempting to correct a situation which it deemed improper in an unlawful manner—by violating the express provisions of the statute against discrimination and prejudice, and also, that the Commission's findings and conclusions are wholly unsustained and unsupported by proof, because the fundamental and controlling fact is that there is no difference in the transportation service or the cost thereof, and hence calls for a conclusion directly contrary to that reached by the Commission.

III.

This Honorable Court misunderstood and misconceived our contention when it said in the Opinion (p. 9) that, "The appellants do not claim that the Commission's findings are devoid of proof * * *".

This is correct only so far as certain incidental find-

ings are concerned, as to which it is our contention that, even if correct, they are not controlling, in view of the fundamental fact that there is no difference in the service or the cost thereof.

In short, it is our position that even if it is a fact that transit on the overhead rates tended to disturb the rate structure, reduce the revenues of the carriers, and give an undue preference to the users of transit balances over the users of proportional rates (which we shall show in the next section is not correct), this does not justify the discrimination and prejudice created against the primary markets. If these things needed correcting, that should have been done in a lawful manner, not by violating the express provisions of the Act.

IV.

This Honorable Court misconceived the law in sustaining findings of the Commission to the effect that, as stated in the Opinion, "discriminations were inseparable from the operation, side by side, of two systems of rates allowing transit of grain at primary markets," and misconstrued Appellants' contention in regard thereto in stating that this basic finding is not challenged. (p. 10; also 4 and 5.)

Appellants have vigorously challenged this finding from the beginning and it was presented to this Honorable Court in our Opening Brief (pp. 102 to 105) by way of pointing out, not only that the District Court misinterpreted it, but that the finding is erroneous as a matter of law.

As there pointed out, the original finding of the Commission was that transits on both rates "give an undue preference to the users of transit balances over the users of proportional rates" at the primary markets. 164 I. C. C. 645, R. 53. 205 I. C. C. 335, R. 313.

This finding, as indicated by the quotation on page 5 of the Opinion herein, is based on the fact that a large shipper with greater storage capacity may have a wider selection of billing and proportionately more transit balances than a small shipper, but that obviously does not constitute prejudice as between them, since both have equal opportunities and the use of transit balances is in proportion to their respective volumes of business.

It is evident, therefore, that this finding of the Commission is contrary to law. But even if it were correct, the Commission could not lawfully remove the preference by discriminating against the primary markets.

V.

This Honorable Court misapprehended certain findings of the Commission which were designed to give the impression that the primary markets were not substantially injured by its action.

The unfairness and injustice of the Commission's orders may be forcefully shown by considering the situation of Omaha in the concrete illustration used by the Court on page 6 of the Opinion.

As explained in that connection, the Commission first prohibited transit on the lower through rates at all points on rate-break routes, while permitting all points on other routes to transit as before. The result was that such interior points as Falls City and Nebraska City on routes through Omaha (a rate-break point) from Kansas City to Chicago had to pay 22½ cents while interior points on other routes not passing through Omaha paid only 16 cents.

This, the Opinion states, placed interior points on rate-break routes at a "substantial competitive disadvantage" with interior points not on such routes, which

is obviously correct. But what about Omaha? That city is in exactly the same position as Falls City and Nebraska City were. Why is Omaha not placed at a "substantial competitive disadvantage" with interior points on other routes?

As further explained in the Opinion, the interior points on rate-break routes requested the Commission to modify its orders so as to remove this discrimination against them, which was granted.

The Commission first prohibited transit at interior points on routes through the primary markets in order not to discriminate against the latter, and then granted transit to such points to remove discrimination between interior points.

In doing so, this Honorable Court says (p. 7) that the Commission found that this would not subject the primary markets to "any new substantial competition disadvantage," and apparently regarded that as justifying the Commission's action, thus overlooking the fact that the original discrimination against the primary markets was created when the Commission permitted the continuance of transit on the lower through rates at points on other routes, while prohibiting it at points on rate-break routes, and that the granting of transit at interior points on the latter therefore merely increased and intensified the discrimination already existing against the primary markets.

This finding therefore means in effect that, since the primary markets had already been seriously injured by the original discrimination, they would not be injured much more by creating additional discriminations, and constitutes an attempt on the part of the Commission to minimize or justify one discrimination by another created by it, as we pointed out fully in our Reply Brief herein. (pp. 35-39.)

The same misconception is inherent in the statement (p. 8) that the Commission found that to yield to the wishes of the primary markets would work "a hardship upon the milling industry at many interior points, with little or no benefit to the markets, which would still be at a disadvantage * * * with interior points on lower-rated routes."

This statement is based on the erroneous assumption that the primary markets desire equalization only with interior points on rate-break routes, when their complaint also involves equalization with interior points on other routes. It also assumes that equalization would be brought about by depriving interior points on rate-break routes of transit on the lower through rates, thus putting them on the same basis as the primary markets, but that is not the only way to correct the situation. The equalization can be brought about without working a hardship upon any one, and that would be of great benefit to the primary markets. The "competitive disadvantage" of the primary markets is just as serious to them as it was to other (interior) points on rate-break routes before the Commission removed the discrimination against them by permitting them to transit on the same basis at interior points on other (lower-rated) routes.

This explanation will also clear up the misleading statement of the Commission quoted in the foot-note at the bottom of page 9 of the Opinion to the effect that to rescind the previous modification (meaning that by which interior points on rate-break routes were granted transit on the lower through rates) would deprive such points of the same kind of transit as interior points on other routes, without materially benefiting complainants, "who would still be confronted with their major competition."

We did not ask the Commission to rescind the previous modification and thus deprive interior points on rate-break routes of transit, but on the contrary contended that the primary markets are entitled to transit on the same basis as all other interior points, regardless of which may be their "major competition."

It must not be forgotten that all appellants seek is equality of treatment. As the Commission itself said:

> "The relief sought * * * will merely permit the terminal markets *to transit on an equality* with interior transit operators on the same rates over the same routes." (Emphasis supplied.) 223 I. C. C. 235, 241, R. 618.

Appellants respectfully suggest that they are entitled to relief which will permit them *to transit on an equality* with all interior points, and that any action of the Commission which denies them that is unlawful.

VI.

This Honorable Court misapprehended our contention when it said that Appellants' "claim, in substance, is that whatever benefits the double system affords the primary markets are natural advantages, and that to deprive them of these advantages works an unlawful discrimination." (p. 9.)

Appellants wish to respectfully make it clear that that is not their claim. They do not claim that they are entitled to the double system as a matter of law, or that their natural advantages, if any, entitle them to the same. All they claim is that they are entitled to transit on the same rates as interior points, and that the denial of that right by the Commission cannot be justified on the ground that they may have certain natural advantages resulting from their location. In other words, that the Commission has no right to require Kansas City

to pay 6½ cents more to transit Omaha grain to Chicago than St. Louis pays, in order to offset any natural advantages which Kansas City may have. Incidentally, this illustration shows that the idea that Kansas City has natural advantages over other cities is merely an excuse for the discrimination, for this Court could almost take judicial notice of the fact that St. Louis has at least as many natural advantages as Kansas City.

With reference to the last paragraph of the Opinion (p. 11), it should be clear, therefore, that Appellants made no "suggestion that the orders of the Commission must be stricken down because they wipe out natural competitive advantages of the primary markets." Our suggestion simply was that, even if the primary markets have certain natural advantages, these may not lawfully be offset by charging them higher rates in order to transit than those paid by other points.

As to the repeated statement in the same paragraph that the rate structure was found to involve serious discriminations, we have already disposed of that by showing that the finding of the Commission upon this point is obviously erroneous.

In conclusion, Appellants desire to reiterate these propositions which they regard as determinative of the issues herein involved:

The fundamental and controlling fact in this case is that the transportation and transit services and the cost thereof at the primary markets and at interior points are the same, and hence a difference in rates is unlawful.

Under the circumstances the doctrine of administrative finality should not be regarded as a shield of immunity for the orders of the Commission here involved.

The Commission has no authority under the law to require that one point on a through route shall pay higher transportation charges in order to transit, than other points on the same or a comparable route.

The Commission has no authority under the law to correct a situation which it deems improper in an unlawful manner—by creating unjust discrimination and undue prejudice expressly prohibited by the Act.

Any other construction of the law will not only destroy the primary markets and leave them without a remedy, but accentuate and multiply the very wrongs which the Act was designed to prevent.

For the foregoing reasons, it is respectfully urged that this Petition for Rehearing be granted and that the mandate of the Court be stayed pending disposition thereof.

Respectfully submitted,

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SAMUEL J. WETTRICK,
Attorneys for Petitioners.

Certificate of Counsel.

I hereby certify that I am one of counsel for the Appellants and Petitioners in the above and foregoing Petition, and that the same is presented in good faith and not for delay.

Dated at Chicago, Illinois, this 28th day of January, 1942.

SAMUEL J. WETTRICK,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 143.—October Term, 1941.

The Board of Trade of Kansas City, Mo., J. F. Leahy, R. E. Swenson, G. A. Johnson, et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, Board of Railroad Commissioners of the State of North Dakota, et al.	Appeal from the District Court of the United States for the Western District of Missouri.

[January 5, 1942.]

Mr. Justice Frankfurter delivered the opinion of the Court.

We have before us on this appeal orders embodying a series of determinations made by the Interstate Commerce Commission after inquiries into the grain rate structure stretching over a period of twelve years. The plaintiffs are millers, elevator companies, boards of trade, grain exchanges, and other business interests in Kansas City, St. Louis, Omaha, St. Joseph, Atchison, Leavenworth, and Minneapolis, the great grain centers known in the trade as "primary markets". The Commission's orders, they complain, create an unlawful discrimination under the Interstate Commerce Act, §§ 1(5), 2, 3(1), by prohibiting the interruption of shipments of grain for the purpose of being stored, marketed, or processed—technically characterized as transit privileges—at these primary markets on the lower rates under which these privileges are available at competing interior points (*i. e.*, grain centers other than primary markets). The District Court dismissed the complaint, 36 F. Supp. 865, and the case is here on appeal. Judicial Code § 210; 28 U. S. C. § 47(a).

As one phase of the effort to relieve agricultural distress, Congress in 1925 by the Hoch-Smith Resolution directed the Interstate Commerce Commission to make a thorough investigation of the rate structure of common carriers "in order to determine to what extent and in what manner existing rates and charges may be un-

just . . . or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist." 43 Stat. 801; 49 U. S. C. § 55.

Accordingly, on September 30, 1926, the Commission instituted a comprehensive investigation into the rates and practices affecting grain and grain products in the Western District.[1] The Commission called its proceeding "unusual", involving as it did "threescore and more of major issues, affecting every part of a vast territorial domain, each of which would ordinarily present a case of more than average importance". 164 I. C. C. 619, 697. Extensive hearings were held, and on the basis of a huge record of some 53,000 pages of testimony, including 2,100 exhibits, 20,000 pages of memoranda, exceptions, and oral arguments, the Commission on July 1, 1930, issued a report and order prescribing maximum rates for grain and grain products. 164 I. C. C. 619. A supplemental report and order were issued on April 13, 1931. 173 I. C. C. 511. Because the Commission did not take evidence relating to the drastic changes in economic conditions due to the depression occurring between the close of its hearings and the date of its orders, this Court set aside the orders. *Atchison, etc. Ry. Co.* v. *United States*, 284 U. S. 248. New and extensive hearings were thereupon held, and on October 22, 1934, the Commission in an elaborate report affirmed some of its earlier findings and modified others. 205 I. C. C. 301. Upon further consideration of the record, the Commission issued a supplemental order to remove discriminations between interior points. 215 I. C. C. 83. Dealers at the primary markets thereupon filed formal complaints seeking modification of that part of the Commission's orders which differentiated between transit privileges at primary markets and those at interior points. Hearings upon these complaints produced more than 7,000 pages of new testimony and over 250 exhibits. On July 27, 1937, the Commission authorized but did not require the carriers to meet the requests of the primary markets. 223 I. C. C. 235. The carriers having declined to act on this authorization, the Commission was

[1] The Western District is defined as the area "on and west of the Mississippi River, west of Lakes Superior and Michigan, and west of and including Illinois".

petitioned to enter a mandatory order. Proceedings were reopened, new arguments were heard, and on July 12, 1938, the Commission found that the prescribed rates did not subject the primary markets to any "undue prejudice and disadvantage". 229 I. C. C. 9, 16. Upon reconsideration this conclusion was affirmed on March 13, 1939. 231 I. C. C. 793. To upset these findings and to strike down the orders based upon them the present suit was filed.

Since the transit privilege is at the core of this litigation, a brief exposition of its mechanics and manipulations becomes necessary. The privilege of transit enables grain to be shipped from point A to point B, there to be stored, marketed, or processed, and later reshipped to point C at a rate less than the combination of the separate rates from A to B and B to C. See *Transit Case*, 24 I. C. C. 340; *A., T. & S. F. Ry.* v. *United States*, 279 U. S. 768, 777-79; Locklin, Economics of Transportation (1935) 122-23, 629-31. The shipper pays the local rate on the inbound shipment to the transit point, B in our illustration. A receipted freight bill specifying the point of origin, the rate paid, and other pertinent data, is recorded with the transit bureau as evidence of intention of further transportation of the inbound grain or its equivalent. When the outbound shipment is tendered to the carrier, the freight bill is surrendered in order that the shipper may obtain an outbound rate lower than that which he would otherwise be compelled to pay. The privilege belongs, as it were, to both the grain and its shipper. "The benefit attaching to grain shipped into the primary market is commonly so broad that it is transferable not only to another owner of the same grain, but to like grain coming from the same grain point." *A., T. & S. F. Ry.* v. *United States*, 279 U. S. 768, 778.

This privilege was available in the primary markets under two different rate schemes: (1) the "overhead through rate" and (2) the "rate-break combination".

(1) An overhead through rate is the rate from an originating point to the final destination, or to a gateway like Chicago, via a particular point. Thus, on a shipment of grain from Enid, Oklahoma, to Chicago via Kansas City, the overhead through rate was 38.5 cents per hundred pounds. Under this rate, grain reaching Kansas City could receive the various privileges of transit upon payment of 23.5 cents (the local rate from Enid to Kansas City)

upon the inbound shipment, and the difference (known as the "transit balance") between the overhead through rate, 38.5 cents, and the 23.5 cents inbound rate, upon the outbound shipment.

(2) On a "rate-break" basis, however, grain moved on a combination of the local or flat rate from the originating point to the primary market and the "proportional" rate from that market to a gateway or the final destination. The primary markets therefore came to be known as "rate-break" points. The "proportional" rate, representing an average of transit balances under overhead through rates, was designed to offset the competitive advantages of lines going through rate-break points as against lines starting there. The significance of the rate-break combination lay in the fact that for many points of origin there were no overhead through rates. In the above example, the proportional rate on outbound grain shipments from Kansas City to Chicago was 17.5 cents. The applicable rate on a shipment of grain from an originating point having no through rate to Chicago via Kansas City, with or without transit at Kansas City, was a combination of the local rate to Kansas City and the proportional rate from Kansas City to Chicago.

Thus, the difference between the two systems permitting transit at primary markets was the rate at which the outbound traffic moved. Under the rate-break combination the outbound shipment moved at the proportional rate; under the overhead through rate, it moved at the transit balance. The availability of these two rate bases, the Commission found, gave rise to serious discriminations: "Whether outbound shipments are at proportional rates or transit balances depends upon the selection of the inbound freight bill. If the inbound freight bill covers a shipment from an origin point from which there is no overhead route with transit to final destination, the outbound shipment is at the proportional rate. But grain from a point from which there is no overhead rate with transit can, under present practice, be substituted for grain from a point from which there is such an overhead rate with transit, and can be forwarded, upon presentation of the inbound expense bill covering inbound transportation from the latter point, at the transit balance due that expense bill." 164 I. C. C. 619, 634.

"The uncertainty in advance as to the outbound basis of charge arises from the dependence of that charge upon a check of the individual shipper's range of inbound billing. The outbound charge will be a transit balance if the inbound freight bill surrendered

covers a shipment from an origin from which there is a one-factor through rate less than the rate-break combination, and will be the higher proportional rate if the inbound freight bill surrendered covers a shipment from an origin from which there is no such one-factor through rate. Transit balances will vary with the measure both of the through rates and of the inbound rates to the transit point.

"The advantage to the user of the transit balance over the user of the higher proportional rate is evident, and increases in the ratio of the increase in the storage capacity of the respective cash-grain dealers at the rate-break markets. In other words, the greater the storage capacity the wider the selection of inbound billing and proportionately more transit balances." 205 I. C. C. 301, 335.

In the judgment of the Commission these practices "tended to disrupt the rate-break combinations, disorganize the general rate structure, make uncertain in advance the outbound basis of charge, give an undue preference to the users of transit balances over the users of proportional rates, depress the price of grain at the rate-break markets and, by direct reflection, at the country points, and reduce the revenues of the carriers." 205 I. C. C. 301, 334.

Thus, the issue before the Commission was "whether the rates through the primary markets shall be made on the combination of flat rates to and proportional rates from the markets exclusively, or in part, or at all." Putting in the balance all the complex and conflicting interests, the Commission reached these conclusions: "Just so long as transit balances remain a substantial factor in the adjustment of rates from the primary markets, just so long will there be undue preferences between outbound shippers, as well as general instability in rates resulting from shippers seeking the translation of transit balances into proportional rates. . . . The best interests not only of the primary markets, but of the producer, consumer, and carrier will be served by the fullest possible application of the rate-break combinations through primary markets." 164 I. C. C. 619, 644-45.[2]

[2] The Commission specifically found that the adoption of the exclusive rate-break combination at the primary markets would give the markets substantial competitive advantages over interior transit points: "The proportional rate is applicable over all outbound lines upon surrender of an inbound freight bill covering an inbound shipment by rail, whether the transportation through the rate-break market is over a reasonably direct route or not. It is the equivalent in all respects, and more, of a local rate. . . . It is designed

Accordingly it prescribed new rate-break combinations[3] and made them applicable to transit both at primary markets and at interior points on routes passing through such markets.[4] The exclusive rate-break combinations were not made applicable to interior points not on routes passing through rate-break markets because the rate-break combinations had no relevance to these points. 164 I. C. C. 619, 645; 173 I. C. C. 511, 516-17.

A concrete illustration will rob this railroad jargon of its mystery. The through rate over numerous routes from Kansas City to Chicago was 16 cents. Some of these routes pass through Omaha, from which the proportional rate was also 16 cents. Other routes from Kansas City to Chicago do not pass through Omaha. Interior points like Falls City and Nebraska City, which are on routes through Omaha, had to pay 6½ cents, the local rate to Omaha, plus 16 cents, the proportional rate from Omaha to Chicago. But other interior points lying between Kansas City and Chicago on routes not passing through Omaha were required to pay only the 16 cents through rate. The net result was that interior points on routes passing through rate-break markets were placed at a substantial competitive disadvantage with interior points not on such routes.

Dealers at the interior points on routes passing through rate-break markets like Omaha petitioned the Commission to modify

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for the final gathering in by the rate-break market, for through transportation at less than the combinations of local rates that would otherwise apply, of grain not procurable under one-factor through rates less than the rate-break combinations (and resulting transit balances less than the proportional), because of the limitations on out-of-line and back-haul movement incident to the usual application of the one-factor through rates only over reasonably direct routes, and because of the further usual requirement of outbound shipment from the transit point over the rails of the inbound carrier. The proportional rates therefore open up to the rate-break markets the widest possible range of originating and distributing territory and afford, together with the larger number of carriers usually found converging inbound to and radiating outbound from the rate-break market, in the direction of the normal flow of the grain traffic, a decided advantage to that market over the interior transit point." 205 I. C. C. 301, 340-41

[3] The Commission revised existing rate-break combinations, reducing both the inbound flat rates and the outbound proportionals, and ordered that the prescribed rate-break combinations be made the exclusive basis of charge upon grain shipments moving through or stopping for transit at primary markets, and that overhead through rates less than the prescribed rate-break combinations be cancelled. 164 I. C. C. 619, 645.

[4] "The restriction is laid on the intermediate points other than the market, as well as upon the market, in order not to discriminate against the market in favor of the other intermediate points." 173 I. C. C. 511, 516.

its orders so as to remove this discrimination between interior points. They urged on the Commission that inasmuch as the fundamental purpose of the rate-break combinations was the establishment of uniform proportional rates on outbound shipments from primary markets, this purpose would not be frustrated if, in order to meet the lower through rate over competitive routes, transit on the through rate were permitted at interior points on routes through rate-break markets. The Commission found that the requested modification would remove the discrimination between interior points without subjecting the primary markets to any new substantial competitive disadvantages. 215 I. C. C. 83, 92-3. It found that under transit on an overhead through rate, dealers at interior points operated under important competitive disadvantages. The through rates were applicable only on "reasonably direct", not "markedly circuitous" routes, and outbound shipments from the transit point were usually limited to the rails of either the inbound carrier or a carrier participating with it in a joint rate via the transit point. Dealers at rate break markets, on the other hand, were free from such restrictions as to circuity of routes and choice of outbound carrier. The proportional rate was applicable to all lines from primary market to destination regardless of the inbound shipment's point of origin. The Commission found this to be a "substantial advantage to the transit operators at the rate-break markets over the transit operators at the interior transit points". 215 I. C. C. 83, 91. Accordingly, it modified its previous orders so as to permit transit at interior points on routes passing through a primary market "on the basis of a lower rate in effect over a competing route between the same points". 215 I. C. C. 83, 93.

To give this order practical application: At all interior points lying on routes from Kansas City to Chicago, transit privileges were available at the 16 cents rate, while shipments stopping for transit at primary markets along such routes, *e. g.*, Omaha, Atchison, Leavenworth, and St. Joseph, could move only at the rate-break combination of the 6½ cents inbound rate and the 16 cents outbound proportional rate.

The crux of this litigation is the validity of the differentiation between primary markets and interior points thus made by the Commission in the setting of the whole history of grain rate regulation.

Dealers at the primary markets complained against this differentiation. The Commission again canvassed the perplexing factors of the tangled problem before it. After pointing out that at the earlier stages of the grain rate inquiry "especially the markets" had supported the system of "rate-breaks at market points and overhead rates with transit at local points", the Commission observed: "No extensive rate structure can be made perfect nor can any rate structure be made permanent in any real sense in a changing world. . . . The two *Grain cases* together have demonstrated the impossibility, even on the part of those most experienced, most competent, and most expert, of seeing in advance the consequences of the particular changes in rates and practices here under consideration. Apparently nothing but experience can furnish a demonstration, and even the demonstration of experience may not prove to be conclusive unless it can be had on a scale sufficiently large and at intervals of time sufficiently close, and under substantially similar conditions." 223 I. C. C. 235, 245-46. It took occasion to recall these guiding considerations from its first report: "It would be impossible to take any comprehensive action without adversely affecting certain of the conflicting interests upon this record. Nothing but experience can demonstrate what the effect will be regarding certain of these issues. . . . All parties should cooperate to make careful note of the effect upon their interests, with the view to bringing to our attention from time to time, after a reasonable trial, those situations which may require further consideration." 164 I. C. C. 619, 698. To yield to the wish of the dealers of the primary markets would, the Commission found, work "a hardship upon the milling industry at many intermediate points, with little or no benefit to the markets, which would still be at a disadvantage in competing with other rate-break markets and interior points on lower-rated routes." 223 I. C. C. 235, 245. It concluded, therefore, that the record did not justify the mandatory order sought by the markets. Instead it authorized the carriers by appropriate tariffs to make "restricted departures from the exclusive application of proportional rates at rate-break points for a limited period of time" upon condition that such departures "should be surrounded by such effective safeguards as will make it impossible to reestablish" the discriminations incident to the double system of rates at primary markets. 223 I. C. C. 235, 246.

The carriers having declined to act on this authorization, the markets again sought a compulsory order. Upon reargument, the Commission concluded that "the granting of the transit requested would break down the rate-break adjustment prescribed in the *Grain Case;* that said adjustment should be abandoned, if at all, only upon demonstration of its failure as a workable adjustment, over an adequate period of normal conditions in the grain trade; that such a test has not been given the adjustment". 229 I. C. C. 9, 16.[5] Accordingly, the Commission dismissed the complaints and withdrew its previous permission to the carriers voluntarily to establish the rates requested by the primary markets. After a second reargument the Commission adhered to this conclusion. 231 I. C. C. 793.

The appellants do not claim that the Commission's findings are devoid of proof or that they were reached without observance of appropriate procedures. Their claim, in substance, is that whatever benefits the double system affords the primary markets are natural advantages, and that to deprive them of these advantages works an unlawful discrimination.

The Act forbids the Commission to establish a rate structure which would give one transit point an "undue or unreasonable preference or advantage" and would subject another point to an "undue or unreasonable prejudice or disadvantage". But this does not mean that the law compels identity of treatment for like services at different places. It prohibits only "undue" or "unreasonable" discriminations. "Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission . . . , and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power." *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481; *see Nashville Ry.* v. *Tennessee*, 262 U. S.

[5] To rescind the previous modifications, the Commission found, "would deprive these interior transit points of the same kind of transit accorded interior transit points on other routes and . . . would not materially benefit complainants, who would still be confronted with their major competition". 229 I. C. C. 9, 14.

318, 322; *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, 352 53.

The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems. Cf. *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 581-82.

The wisdom of the narrow scope within which Congress has confined judicial participation in the rate-making process is strikingly vindicated by the history of this controversy. The Commission's laborious investigation into the grain rate structure disclosed that discriminations were inseparable from the operation, side by side, of two systems of rates allowing transit of grain at primary markets. This basic finding is not challenged. And it is this fact which created the problem for solution by the Commission. There was no ready answer either in law reports or in economic experience. Any solution had to rest on informed judgment. And judgment in a situation like this implies, ultimately, prophecy based on the facts in the record as illumined by the seasoned wisdom of the expert body. In this perspective, the Commission had several choices before it—but all inevitably rested upon trial and error. It might have established the overhead through rate as the exclusive basis of transit at primary markets. It might have banked on the exclusive rate-break combination. It might have abolished the privilege of free transit entirely. Of only one thing could the Commission be completely certain: no action could be taken without "adversely affecting certain of the conflicting interests". 164 I. C. C. 619, 698. Weighing the prospective gains and hurts which were part of all of the proposed remedies, the Commission decided upon the exclusive rate-break combination. It did so, however, with full recognition that the wisdom of its action had to meet the test of experience. Therefore, it treated its conclusion as part of a continuing process, and requested the parties to give the system which it adopted a "reasonable trial", contemplating such further consideration as the practical operation of the system would require. The Commission refused the modifications asked by the appellants because the rate-break adjustment was "entitled to a thorough test over an adequate period of normal

conditions in the grain trade" and it had "received no such fair test up to the present time". To grant the requested modifications would "break down the rate-break adjustment". 229 I. C. C. 9, 15-16. These findings are incontestable.

That the Commission itself was of divided mind in the successive stages of this controversy emphasizes that the problem is enmeshed in difficult judgments of economic and transportation policy. Neither rule of thumb nor formula nor general principles provide a ready answer. We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the grain rate structure only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate-break adjustment was designed to remove—evils which, for all we know, would be far more serious than those complained of by the appellants.

What we have said sufficiently disposes of the suggestion that the orders of the Commission must be stricken down because they wipe out natural competitive advantages of the primary markets. A rate structure found to involve serious discriminations among shippers, carriers, and transit points alike, is hardly a manifestation of nature beyond the Commission's power to repair.

Affirmed.

Mr. Justice ROBERTS is of opinion that the decree of the District Court should be reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.